

1 JUDGE ROSAS: Any follow-up?

2 MR. HEARING: None from us.

3 JUDGE ROSAS: Okay. Thank you, sir, you're excused. Do  
4 not discuss your testimony with anyone until you're advised  
5 by counsel that the record in the case is closed or otherwise  
6 directed, okay?

7 THE WITNESS: Okay.

8 JUDGE ROSAS: Thank you. Have a good day.

9 THE WITNESS: Thank you.

10 **(Witness excused.)**

11 JUDGE ROSAS: Does the General Counsel or the government  
12 have any more witnesses?

13 MS. LEONARD: There are, I believe, no more witnesses.  
14 If I could have a moment to confer with Regional management?

15 **JUDGE ROSAS: Sure. Off the record.**

16 **(Off the record from 11:23 a.m. to 11:27 a.m.)**

17 MS. LEONARD: Your Honor, before the General Counsel  
18 rests, we'd like to revisit the motion made Monday to amend  
19 the complaint at paragraph 6(b). We have, as you requested,  
20 prepared a conformed amended complaint that shows the  
21 revisions made both by the first amendment and by the verbal  
22 motion on Monday.

23 JUDGE ROSAS: This will be 1(r)?

24 MS. LEONARD: Yes.

25 **(General Counsel's Exhibit 1(r) marked for identification.)**

1 MS. LEONARD: So the motion is granted? Yes?

2 JUDGE ROSAS: Just wait for Respondent to inform that.  
3 How's it look?

4 MR. HEARING: There appears to be a correction, too, in  
5 paragraph 5; is that right?

6 MS. LEONARD: Yeah, that was the first amendment to that  
7 issue on --

8 MR. HEARING: Yeah, the --

9 MS. LEONARD: Yeah, January.

10 MR. HEARING: And then paragraph 6(a) --

11 MS. LEONARD: The same correction.

12 MR. HEARING: And these are all new, right?

13 MS. LEONARD: Yes.

14 MR. HEARING: All right. So we're sufficiently noticed.

15 JUDGE ROSAS: Okay. All right, so without objection,  
16 General Counsel's 1(r) is received into evidence as the  
17 latest version of the amended updated complaint.

18 **(General Counsel's Exhibit 1(r) received in evidence.)**

19 MS. LEONARD: And to clarify as well, paragraph 8 of the  
20 complaint was also slightly edited to reflect that there is  
21 now a paragraph 16.

22 MR. HEARING: Understood.

23 JUDGE ROSAS: Okay. And the answer --

24 MR. HEARING: Do we need to formally --

25 JUDGE ROSAS: No.

1 MR. HEARING: All right.

2 JUDGE ROSAS: No. All right, anything else you've got?

3 MS. LEONARD: No, Your Honor. The General Counsel rests  
4 at this time.

5 JUDGE ROSAS: Okay. All right, is there a motion by the  
6 Respondent?

7 MR. HEARING: Sure. For the record, we'll make a motion  
8 equivalent to a directed verdict for lack of sufficient  
9 evidence to bring Your Honor to find violations of 8(a)(1) or  
10 8(b), and we'll otherwise reserve argument.

11 JUDGE ROSAS: All right, decision is reserved.

12 All right, Charging Party, do you want to proceed with  
13 your objections portion of the case?

14 MS. WALKER: Yes, Your Honor. The Petitioner calls  
15 Scott Raymond Pearson. I'll go get him.

16 JUDGE ROSAS: Sure.

17 MS. WALKER: And I am going to reference two exhibits  
18 already in evidence. I'll get them out for him before.

19 JUDGE ROSAS: Are those Charging Party exhibits?

20 MS. WALKER: One is Charging Party's 25(a) and the other  
21 one is General Counsel 12, which I can hold the T-shirt up.

22 JUDGE ROSAS: I'll put the exhibit on top.

23 MS. WALKER: Thank you.

24 JUDGE ROSAS: Okay. What's the exhibit for General  
25 Counsel?

1 MS. WALKER: It's General Counsel's 12. It's the  
2 T-shirt, and I can hold it up for him.

3 JUDGE ROSAS: Next witness? Oh, you announced the  
4 witness, sorry. Please raise your right hand.  
5 (Whereupon,

6 **RAYMOND S. PEARSON**

7 was called as a witness by and on behalf of the Charging  
8 Party and, after having been duly sworn, was examined and  
9 testified as follows:)

10 JUDGE ROSAS: Please have a seat. Can you please state  
11 and spell your name?

12 THE WITNESS: Raymond, R-a-y-m-o-n-d, Scott, S-c-o-t-t,  
13 and Pearson, P-e-a-r-s-o-n.

14 JUDGE ROSAS: All right, I'm going to ask you to keep  
15 your voice up and also provide us with an address for the  
16 record.

17 THE WITNESS: 10117 Highway 587, McKee, Kentucky 40447.

18 JUDGE ROSAS: Okay. Are you getting it sufficiently?  
19 All right, I'm going to ask you -- and if you could just sit  
20 up. That doesn't amplify, but it needs to record your voice  
21 adequately for the record, all right?

22 THE WITNESS: Yes, sir.

23 JUDGE ROSAS: All right, go ahead.

24 **DIRECT EXAMINATION**

25 Q. BY MS. WALKER: Mr. Pearson, my name is Kim Walker, and

1 I represent the BAC Local 8 Southeast as the Petitioner in  
2 this matter, and I just have a few questions for you.

3 A. Okay.

4 Q. Are you a member of the Union?

5 A. Yes.

6 Q. And which union are you a member of?

7 A. Local 8.

8 Q. And is that Bricklayers and Allied Craftworkers,  
9 Local 8?

10 A. Yes.

11 Q. And how long have you been a member of the Union?

12 A. Maybe a couple years, maybe a little longer.

13 Q. Can you speak up just a little bit more for us?

14 A. Maybe a couple years, maybe a little longer.

15 Q. Did you become a member of the Union when you went to  
16 work for an employer?

17 A. Yes.

18 Q. Okay. And what employer was that?

19 A. AMS. Or no, the first one was in Port Everglades.

20 Q. Okay. And what employer was that?

21 A. I forget.

22 Q. And did you work for that employer at Port Everglades  
23 before you worked at AMS?

24 A. Yes.

25 Q. Are you a mason?

1 A. Yes.

2 Q. Were you a mason at AMS?

3 A. Yes.

4 Q. And how long have you been a mason?

5 A. Well, I've laid brick since I was maybe 20. Maybe  
6 around 20 years old is when I started laying.

7 Q. Okay. And let me ask you this. Now, how old are you  
8 now?

9 A. I'm 40.

10 Q. When did you start work at Advanced Masonry Systems?

11 A. I really ain't exactly sure.

12 Q. Okay, let me see if I can give you something to  
13 refresh --

14 A. It's been over maybe a year and a half ago.

15 Q. Let me ask you this. What project did you first go to  
16 work on for AMS?

17 A. Bethune-Cookman.

18 Q. Bethune-Cookman. Do you recall if the Bethune-Cookman  
19 project was started in the fall of 2015?

20 A. Yeah, it was the fall.

21 Q. And I'm going to show you what's been marked as General  
22 Counsel's Exhibit 12, and there's a copy of it in front of  
23 you. Do you recognize this T-shirt?

24 A. I recognize the front, the logo.

25 Q. Did you ever have a T-shirt like this?

1 A. I've always had one of these.

2 Q. Okay. And you're directing our attention, for the  
3 record, to your orange shirt that you're wearing today?

4 A. Yes.

5 Q. And does that have a BAC Local 8 logo on the front of  
6 that?

7 A. Yes.

8 Q. Did you wear that T-shirt when you worked at AMS?

9 A. One like this.

10 Q. Okay. Did you get that? Could you say that louder?

11 A. Yes, one like this.

12 Q. One like that shirt?

13 A. Yeah.

14 JUDGE ROSAS: Counsel, can you hold up the back of that  
15 T-shirt?

16 MS. WALKER: Yes, Your Honor.

17 JUDGE ROSAS: Okay. For the record, the front logo of  
18 his shirt compared to the logo on the shirt that you're  
19 holding up are the same, but the wording on the back of his  
20 shirt as he's sitting here in front of me is different from  
21 the imprint on the back of that T-shirt that you're holding.

22 MS. WALKER: Thank you, Your Honor.

23 Q. BY MS. WALKER: When you worked at AMS, did you have any  
24 stickers on your hard hat?

25 A. Yeah.

1 Q. Did you have any union stickers on your hard hat?

2 A. Yes.

3 Q. Okay, right in front of you, you see a copy of what's  
4 already been admitted as CP-25(a) and (b). Did you have one  
5 of -- a sticker that looked like --

6 A. Yes.

7 Q. -- this exhibit on your hard hat?

8 A. Yes.

9 Q. Which one?

10 A. Local 8. And at some point I've had both of them.

11 Q. Okay. When you started at the Bethune-Cookman project  
12 in Daytona, who was your supervisor?

13 A. Bob Dutton.

14 Q. Bob Dutton?

15 A. Yeah.

16 Q. When you worked on the Bethune-Cookman project for AMS,  
17 did you have access to food trucks?

18 A. Yes.

19 Q. Okay. And when would you have access to those food  
20 trucks?

21 A. At lunch -- well, at break and lunch.

22 Q. And when would you take a break?

23 A. Of the morning, 9-something.

24 Q. And how long would that break be?

25 A. Fifteen minutes.

1 Q. And when you took a break at lunch, how long would that  
2 be?

3 A. Thirty minutes.

4 Q. And where would the food trucks be parked in relation to  
5 the jobsite?

6 A. Out by where we parked at.

7 Q. And that's referencing where you would park your car to  
8 go to work?

9 A. Yes.

10 Q. Did any supervisor or anyone at AMS tell you that you  
11 could not go to the food trucks?

12 A. No.

13 Q. When you worked at the Bethune-Cookman --

14 A. Well, there was one time, there was one time that -- you  
15 see, because of people leaving stuff laying on around that,  
16 he told us that if we, you know, didn't keep our stuff picked  
17 up, that he's going to quit letting the trucks come.

18 Q. Okay.

19 A. Yeah. You know, they're a good company.

20 Q. Thank you. When you worked at the Bethune-Cookman  
21 jobsite, did Mike Bontempo visit that jobsite?

22 A. Yes.

23 Q. And what time of day would he come to the jobsite?

24 A. It all depends.

25 Q. Okay. And when he would come to the jobsite, where

1 would you and other employees typically meet him?

2 A. Out by the -- you know, just out by the truck. Yeah,  
3 out by where we parked at.

4 MS. WALKER: Okay. That's all I have. Thank you. But  
5 counsel may have other questions for you.

6 THE WITNESS: All right.

7 JUDGE ROSAS: Okay, Respondent?

8 MR. HEARING: May I have a moment to confer?

9 JUDGE ROSAS: Sure.

10 **(Pause.)**

11 MR. HEARING: No questions.

12 JUDGE ROSAS: Thank you, sir. You're excused.

13 THE WITNESS: All right.

14 JUDGE ROSAS: Do not discuss your testimony with anyone  
15 until you're advised otherwise by counsel that the record in  
16 the case is closed.

17 THE WITNESS: Yeah.

18 JUDGE ROSAS: Thank you.

19 THE WITNESS: All right, thank you.

20 **(Witness excused.)**

21 JUDGE ROSAS: Do you have any other witnesses?

22 MS. WALKER: Petitioner rests in its case on the  
23 challenges, Your Honor.

24 MS. LEONARD: Objections.

25 JUDGE ROSAS: On the objections part?

1 MS. WALKER: I'm sorry, on the objections.

2 JUDGE ROSAS: I'll take the other one, though.

3 MS. WALKER: No.

4 **(Laughter.)**

5 JUDGE ROSAS: Okay, all right. So we're ready to go to  
6 the Respondent's defense. How long would you estimate your  
7 first witness?

8 MR. HEARING: Definitely through -- it won't be 15  
9 minutes. It would be -- and Mr. Thomas is handling him. I  
10 think 45 minutes to an hour.

11 MR. THOMAS: I think, on direct examination, Your Honor,  
12 I think that estimate is accurate. I can't obviously speak  
13 for the General Counsel or counsel for the Union on  
14 cross-examination.

15 JUDGE ROSAS: All right, why don't we take a lunch break  
16 at this point and make a clean cut.

17 **(Whereupon, at 11:42 a.m., a lunch recess was taken.)**

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A F T E R N O O N     S E S S I O N

(Time Noted: 1:03 p.m.)

3 (Whereupon,

4 FERNANDO RAMIREZ

5 was called as a witness by and on behalf of the Respondent  
6 and, after having been duly sworn, was examined and testified  
7 as follows:)

8 JUDGE ROSAS: All right, please have a seat.

9 THE WITNESS: Thank you.

10 JUDGE ROSAS: Could you please state and spell your  
11 name?

12 THE WITNESS: Fernando Ramirez.

13 JUDGE ROSAS: Could you spell it, please?

14 THE WITNESS: F-e-r-n-a-n-d-o R-a-m-i-r-e-z.

15 JUDGE ROSAS: Okay, provide us with an address.

16 THE WITNESS: 2106 18th Street, West Bradenton.

17 JUDGE ROSAS: Florida?

18 THE WITNESS: Florida.

19 JUDGE ROSAS: Okay.

20 DIRECT EXAMINATION

21 Q. BY MR. THOMAS: Good morning, or good afternoon rather,  
22 Mr. Ramirez. How are you today?

23 A. Good.

24 Q. All right. Are you currently employed?

25 A. Yes, sir.

1 Q. With whom are you currently employed?

2 A. Advanced Masonry Systems.

3 Q. For how long have you worked with Advanced Masonry?

4 A. I've been working with this company for around like 16  
5 years.

6 Q. What is your current job title?

7 A. Safety coordinator.

8 Q. And to whom do you report as a safety coordinator for  
9 AMS?

10 A. To my safety director, Aleksei Feliz.

11 Q. As the safety coordinator, what are your job duties and  
12 responsibilities?

13 A. Make sure we provide our employees with the right  
14 training, to provide and tell our employees our policies of  
15 the Company, make sure they do their right properly -- their  
16 job properly, I'm sorry -- and make sure they have the right  
17 equipment to do the job.

18 Q. Do you hold any certifications?

19 A. Yes.

20 Q. What are the certifications you hold?

21 A. As safety coordinator?

22 Q. Yes, sir.

23 A. I have my 30-hour OSHA class and also CPR and first aid  
24 kit certification.

25 Q. As a safety coordinator, is one of your responsibilities

1 at AMS training employees on workplace safety?

2 A. Yes.

3 Q. If you would look at the binder that's right up there,  
4 please, and turn it to tab number 7, which is Respondent's  
5 Exhibit Number 7 in evidence. Let me know when you've turned  
6 to that page.

7 A. Yes.

8 Q. It looks like this, tab number 7.

9 A. Yes.

10 Q. Do you recognize what that is?

11 A. Yes, this is the book, the Activity Hazard Analysis  
12 (AHA) new employee orientation book, the one I used at the  
13 Westshore Yacht Club project.

14 Q. All right. So is this something you've used when you're  
15 training AMS employees as safety coordinator?

16 A. That's correct.

17 MS. WALKER: Objection, it's leading.

18 MR. THOMAS: I said if he uses it. If he didn't, he can  
19 say no.

20 JUDGE ROSAS: I'll allow it on the general proposition,  
21 but we can start getting into that strike zone of the  
22 contended areas and holding it a little tighter, okay?

23 MR. THOMAS: Sure, Your Honor.

24 JUDGE ROSAS: So he answered that, and that's yes.

25 THE WITNESS: Yes.

1 Q. BY MR. THOMAS: All right, Mr. Ramirez, did you use this  
2 particular document, Respondent's Exhibit 7, as part of  
3 employee training at a particular jobsite location?

4 A. That's correct.

5 Q. Where did you use it?

6 A. I used it at Westshore.

7 Q. All right, let's give the Judge a little bit more  
8 detail. When did you use this particular document to do  
9 training at Westshore?

10 A. I used it in February 9, 2016, at the Westshore location  
11 to go over fall protection training, ladders, scaffold,  
12 anchor points, heavy equipment.

13 Q. When you did the training at Westshore, where exactly  
14 were you at the jobsite?

15 A. I was at the parking lot of the jobsite.

16 Q. And what time of day did you do the training?

17 A. A date?

18 Q. What time of the day?

19 A. It was in the morning.

20 Q. Do you remember specifically when?

21 A. I'm not sure.

22 Q. All right. How long did your training take?

23 A. About an hour and 15 minutes.

24 Q. Can you tell the Judge approximately how many employees  
25 attended the training?

1 A. From five to six employees.

2 Q. Do you remember -- well, let me ask this question. Do  
3 you know Luis Acevedo?

4 A. Yes, sir.

5 Q. Who is Mr. Acevedo?

6 A. He's one of our employees on the date, a mason. That  
7 was his position.

8 Q. Do you know who Walter Stevenson is?

9 A. That's correct.

10 Q. And who is Mr. Stevenson?

11 A. Another mason that worked for us.

12 Q. Did Mr. Acevedo and Mr. Stevenson attend your training  
13 at Westshore that day?

14 A. Yes, sir.

15 Q. Did they attend the entire training?

16 A. Yes, sir.

17 Q. Were the employees who attended your training at  
18 Westshore required to sign in to indicate their attendance?

19 A. Yes.

20 Q. All right, if you'll look at Respondent's Exhibit 7 in  
21 evidence, the last two pages, do you recognize what these  
22 last two pages are? Do you know what? I'll point it out --  
23 to refresh your recollection. They've got some signatures on  
24 it.

25 JUDGE ROSAS: We're looking at the signature pages.

1 THE WITNESS: Right.

2 Q. BY MR. THOMAS: Yes, do you recognize what those are?

3 A. Yes.

4 Q. What are those?

5 A. They're the signatures of the people I trained on fall  
6 protection at Westshore.

7 Q. All right. Did you see Mr. Acevedo and Mr. Stevenson  
8 sign these papers?

9 A. Yes, I see Mr. Stevenson here. I trained him on fall  
10 protection on February 9, 2016. And Mr. Luis Acevedo, too,  
11 as well, the same date.

12 Q. Sure. Mr. Ramirez, let me direct you to the beginning  
13 of Respondent's Exhibit 7 in evidence. When you did the  
14 training at Westshore, did you cover all the subjects that  
15 are listed here?

16 A. That's correct.

17 Q. Did the training at Westshore that Mr. Acevedo and  
18 Mr. Stevenson attended specifically include a segment on fall  
19 protection?

20 A. That's correct.

21 Q. If you would turn to the fifth page of the exhibit,  
22 starting from the cover page. If you look closer to the  
23 bottom of the page, where there's a phrase in all caps.

24 A. The first page?

25 Q. Right down on the fifth page, down close to the bottom

1 there's a phrase in all caps. Do you see that?

2 A. Okay, it says folding the scaffold. Is that the one?

3 No. I'm on the fifth page.

4 MR. THOMAS: May I assist the witness, just so we're on  
5 the same page?

6 JUDGE ROSAS: Page 5. He's looking at page 5.

7 MR. THOMAS: Correct. I'm looking at one, there's a  
8 handwritten number 4, and I just want to make sure we're on  
9 the same page. I think the pages may have been moved or  
10 gotten slightly out of order --

11 THE WITNESS: Okay.

12 MR. THOMAS: -- because that's been discussed.

13 THE WITNESS: It says ladder access on the left hand?

14 MR. THOMAS: Correct.

15 THE WITNESS: Okay, we're on the right page.

16 Q. BY MR. THOMAS: All right. Mr. Ramirez, is there  
17 information on this page that summarizes the Company's fall  
18 protection policy?

19 A. That's correct, it's right on the bottom, right in the  
20 middle sentence. It says, "Zero tolerance to fall protection  
21 violation."

22 Q. What does zero tolerance mean?

23 A. That means that when you're working at 6 foot or higher  
24 and you're exposed to a fall, you're supposed to be tied off  
25 correctly to anchor point to support you from fall.

1 Q. All right. During the fall protection segment of this  
2 orientation at Westshore that you're testifying to, did you  
3 explain to the employees who were present what AMS's policy  
4 was on fall protection?

5 A. That's correct.

6 Q. All right. Did you explain what you just testified to  
7 about being above 6 feet?

8 A. Yes.

9 Q. All right. Are there any exceptions? And what I mean  
10 by that, are there any times when an employee can be working  
11 more than 6 feet high and not wearing fall protection?

12 A. That's correct.

13 Q. What are those exceptions?

14 A. I explained to everyone when to be tied off and when not  
15 to need to be tied off, which is having rails all the way  
16 around, properly installed, top rail 42 inches, main rail 21  
17 inches, and no penetrations on the platforms or floor that  
18 they can fall. So in other words, they have to be barricaded  
19 all the way around themselves to not to be able to be using  
20 a harness.

21 Q. What if an employee is working and has a wall in front  
22 of him, does that have any impact on the application of the  
23 fall protection policy?

24 A. That's correct. If they have a wall in front of them,  
25 rails in the sides, rails also in their backs, the wall in

1 front of them has to be at least 42 inches high and has to be  
2 hard from the day before to be able to support them from  
3 falling forward, because if the wall is fresh and green,  
4 still from the same day, they still have to maintain  
5 connected because the wall can still go over.

6 Q. Thank you. Did you explain what you just explained  
7 about the fall protection exceptions, did you explain that to  
8 the employees present at Westshore?

9 A. Yeah, that's correct.

10 Q. Did you tell the employees present at the Westshore  
11 orientation on safety how to wear fall protection?

12 A. That's also correct.

13 Q. What did you explain to them?

14 A. I explained to them how to tie off properly, how to wear  
15 their harness properly by using a dummy; also showing a piece  
16 of paper of how to wear the harness and also put it on myself  
17 to make sure they know how to wear their harness properly;  
18 also may feel for the employees to wearing themselves, to  
19 make sure that they know to wear the harness.

20 Q. All right. During your testimony you pointed to  
21 something behind you. Would you explain what that is behind  
22 you?

23 A. Can I --

24 Q. That's the dummy with the piece of equipment on it.

25 A. This is basically the dummy with a harness on. So as

1 I'm going to fall protection training, I explain to everybody  
2 how the harness is supposed to look like in the back as  
3 they're wearing it and how it's supposed to look like in the  
4 front. And then from there I go on details why this D-ring  
5 has to be in the higher back and not in the lower back, also  
6 why the straps on the legs has to be not too tight and not  
7 too loose. The question is, what is not too tight and too  
8 loose? Four fingers only allowed between your safety harness  
9 strap and your leg. If you cannot put your fingers, that's  
10 too tight. If you put your whole hand, that's too loose. So  
11 you adjust it or tie one knot.

12 Q. All right, let me ask you a couple more questions about  
13 that. How do AMS employees get the safety equipment that  
14 they need?

15 A. Can you repeat the question?

16 Q. Sure. How do AMS employees get the safety equipment  
17 that they need?

18 A. Usually the supervisor, before he goes to the employees  
19 on site, he calls the safety department ahead of time,  
20 talking about 1 to 2 weeks, so that when we provide all the  
21 safety fall protection requirement to be on site when the  
22 employees are ready to work on any operation.

23 Q. Is that harness on the dummy right there something that  
24 AMS would issue its employees?

25 A. Yes.

1 Q. Okay, you can set that down. Let me ask you a  
2 hypothetical situation. If an employee is on the jobsite and  
3 doesn't have a harness, is there anything that AMS does?

4 A. That's correct.

5 MS. WALKER: Objection, calls for speculation.

6 MR. THOMAS: The witness has testified, Your Honor, as  
7 to what his duties are.

8 MS. WALKER: It's a hypothetical.

9 JUDGE ROSAS: Repeat the question.

10 MR. THOMAS: Sure. I said I have a hypothetical. If an  
11 AMS employee arrives at the jobsite and doesn't have a  
12 harness, is there anything that AMS does?

13 JUDGE ROSAS: Do you have an objection to that?

14 MS. WALKER: I think it calls for speculation.

15 MR. THOMAS: But Your Honor --

16 JUDGE ROSAS: Well, okay, rephrase the latter part of  
17 that with respect to policies and procedures.

18 MR. THOMAS: Your Honor, maybe I could ask a different  
19 question.

20 Q. BY MR. THOMAS: Does AMS keep extra harnesses on  
21 jobsites?

22 A. That's correct.

23 Q. Where are they kept?

24 A. On site.

25 Q. When you say on site, is that a particular place?

1 A. Yes, in the supervisor trailer.

2 Q. During the orientation at the Westshore Yacht Club that  
3 Mr. Acevedo and Mr. Stevenson attended, did you explain to  
4 them the different kinds of situations where an employee  
5 would need to tie off?

6 A. That's correct.

7 Q. And when I say tying off -- what does tying off mean?

8 A. Tying off is the anchor point, the one they're going to  
9 use to tie off their -- either their safety strap or their  
10 anchor, Miller anchor point, 5,000 pounds.

11 Q. Did you specifically explain to the employees how to tie  
12 off the scaffolding?

13 A. That's correct.

14 Q. Let me ask you a question. Can an employee tie off the  
15 scaffolding?

16 A. Yes.

17 Q. Is there scaffolding that AMS uses that has a place to  
18 tie off?

19 A. Yes.

20 Q. Would you explain how that works?

21 A. It's a conventional scaffold. It's got like the biggest  
22 rungs, big pipes, and then it's got the small ones. When I  
23 go over the orientation and fall protection training, I  
24 explain to our employees to use the big fat pipe or the  
25 scaffold, which is the big -- stronger, with the most welding

1 on the structure of the scaffold.

2 Q. When you're teaching employees about this, do you  
3 actually demonstrate with the equipment how to tie off the  
4 scaffold?

5 A. That's correct.

6 Q. Would you please use some of the equipment there and  
7 explain how you do that?

8 A. As I was looking on the pages, I saw this page.

9 Q. When you say this page, what are you referring to?

10 A. Page 9.

11 JUDGE ROSAS: Page 9 of Exhibit 7.

12 THE WITNESS: Before I start with my fall protection, I  
13 start with this piece of paper that shows the difference --  
14 like using the 6-foot lanyards and a Guardian retractable.  
15 So I explain to my employees that there's nothing wrong by  
16 using the 6-foot lanyard, according to OSHA, but you got to  
17 use it at the right elevation, which it'll explain right  
18 there on the piece of paper, and I go over those details.

19 If that gentleman is using a 6-foot lanyard, tying off  
20 above their shoulders and then you fall, from where the  
21 anchor point he was tying off all the way to the floor is 18  
22 feet and a half. So they travel the fall, and the bottom of  
23 their feet from the ground is 3 feet away from the floor.

24 So I explain to our employees, yeah, you're going to hit  
25 the ground, but the bottom of their feet should stay about 3

1 feet from the ground. So I explain to them how far -- 4 feet  
2 high or the bottom of the scaffold, they're still going to  
3 impact the materials. So what I explain to them, that we  
4 don't use 6-foot lanyards, that's why. And I explain to them  
5 why, because people don't know how to use it at the right  
6 elevation. So that's why I explain to them that we use only  
7 retractables.

8 JUDGE ROSAS: Okay, before you continue, the witness is  
9 referring to something called a 6-foot lanyard that I don't  
10 know if we have that depicted in the documents, but it  
11 appears to be a strap with metal clips on the ends. Does  
12 anybody want to define it otherwise for the record?

13 MS. LEONARD: The lanyard that they're using.

14 THE WITNESS: Lanyard.

15 JUDGE ROSAS: It's the lanyard.

16 THE WITNESS: So I explain to them why we don't use the  
17 lanyard, because they still travel the fall, and we use only  
18 retractables because this, it will stop you right away and  
19 don't let you fall. On the lanyard, you will travel the  
20 fall. So that's why we don't use that piece of equipment.  
21 We use a retractable.

22 So after that, I explain to them that this piece of  
23 equipment has to go in straight to their 6-foot strap, which  
24 is many notches, 18 inches that you strap for 5,000 pounds,  
25 and 6-foot strap will support 5,000 pounds, as well. So now

1 I explain to them that when they use this piece of equipment  
2 to tie off properly, they have to use the anchor point above  
3 their shoulders, I believe, because if you're 6 feet,  
4 standing 6 feet and you're going to tie off this safety  
5 strap, and your feet, if you fall, you're still going to hit  
6 the ground because it does make any sense. So that's why I  
7 explain to them they have to use the anchor point above the  
8 shoulders. And when they use a 6-foot strap, I also explain  
9 to them, to make it short, they have to double it up. I'm  
10 going to pretend my hand is the scaffold frame, the big part  
11 above their shoulders. So now they shorten the 6-foot strap.  
12 So if they fall, they're never going to go nowhere because  
13 this is going to latch right away.

14 MS. LEONARD: Could we testify for the record that the  
15 witness has looped the lanyard through --

16 JUDGE ROSAS: Around his forearm.

17 MS. LEONARD: Around his forearm.

18 JUDGE ROSAS: Do you mean the forearm, or do you mean  
19 somewhere else?

20 THE WITNESS: Before I said this, I say I'm going to  
21 pretend my hand is the scaffold.

22 MS. LEONARD: No, I understand. But I'm saying, can you  
23 describe what the lanyard itself is actually doing as he's  
24 demonstrating, into the record, that it's being looped  
25 through itself?

1 MR. THOMAS: Sure.

2 JUDGE ROSAS: I'm not sure what you're asking. Go  
3 ahead.

4 Q. BY MR. THOMAS: Sure. Mr. Ramirez, just to clarify, if  
5 you would describe what you're doing, what you did with your  
6 hand and how you attached the lanyard.

7 A. All right.

8 Q. You testified that your forearm would represent the  
9 scaffold.

10 A. So this is the anchor of the scaffold.

11 Q. Correct. And what are you doing right now?

12 A. Right now what I'm doing, I'm making the strap short and  
13 then my retractable --

14 Q. And Mr. Ramirez, just for the record, you're looping the  
15 strap inside of itself?

16 A. Yes.

17 Q. Thank you.

18 A. Yes, according to the manual of the safety strap, that's  
19 the right way to use the safety strap.

20 Q. Correct. Again, to address the General Counsel's point  
21 that you're looping that strap around itself --

22 A. Yes.

23 Q. -- around the scaffold.

24 A. Or you can go and loop it, the safety strap, many times  
25 and then go right through the D-ring, and then it'll do the

1 same thing.

2 Q. All right. Again, just for purposes of clarification,  
3 you've wrapped that strap around your forearm many times,  
4 correct?

5 A. Yes.

6 Q. And your forearm is representing the scaffolding?

7 A. Yes.

8 Q. All right.

9 A. Without it, you don't have the strength.

10 Q. Is there a phrase that's a mason's or you use to  
11 describe that particular technique?

12 A. Excuse me?

13 Q. Is there a particular word or phrase that you or the  
14 masons use to describe that technique you just demonstrated?

15 A. Yes.

16 Q. What is it called?

17 A. You mean the way I --

18 Q. The way you just demonstrated.

19 A. I just explained that that's -- I show them also the  
20 manual of the item or the materials, that it shows in the  
21 picture the many ways how to do it properly.

22 Q. Sure. Mr. Ramirez, what I'm getting at, is there a  
23 particular word or is there a name for that technique that  
24 you just demonstrated here?

25 A. Not really how you can call that.

1 Q. Have you ever heard the phrase "cinnamon roll" or  
2 "cinnamon bun" used?

3 A. I heard that before, but I don't know if that's true or  
4 not. But I heard that before.

5 Q. All right. Mr. Ramirez, the demonstrations that you  
6 just gave, did you show that to the masons that you trained  
7 at the Westshore Yacht Club?

8 A. That's correct.

9 Q. Including Mr. Acevedo and Mr. Stevenson?

10 A. That's correct.

11 Q. Did you show the masons incorrect ways to tie off?

12 A. Yes.

13 Q. Would you tell us what you told the masons during the  
14 training on that subject?

15 A. I showed them the right way and also showing the wrong  
16 way. I'm going to use my arm again for demonstration of the  
17 frame. I explain to them this is a big no-no to do this,  
18 because a lot of people on all the projects, when you're  
19 driving around and you're seeing all the construction, they  
20 do like this.

21 Q. Mr. Ramirez, could you narrate what you're doing with  
22 words so that someone reading the transcript might understand  
23 what you're demonstrating?

24 A. This is --

25 Q. What have you just done with that? What have you done

1 with that piece of equipment?

2 A. What I did, I brought the same carbine and connect it  
3 with the same strap, which is -- that's illegal, that's  
4 wrong. That's the wrong way to use it like that. Also, I  
5 show them that you can never do this.

6 Q. And when you say never do this, would you explain what  
7 you just did?

8 A. What I did is pull my retractable through another  
9 retractable to straight itself, so I can make more -- so I  
10 can have more reach or higher or farther. So I explain to  
11 them what is the right way and what is not the right way to  
12 do. Never to do this, never to do the way you demonstrate  
13 it. And if they don't have the longer retractable, they have  
14 to use -- say something and ask for a bigger retractable so  
15 they can be provided as well.

16 Q. Thank you very much for the demonstrations, Mr. Ramirez.

17 A. And not only show these type of ways to tie off. I got  
18 many ways to show my employees because not in all the  
19 operations we use safety straps. We also work in concrete,  
20 concrete ceilings, floors. So I demonstrate as well --

21 Q. Mr. Ramirez, you don't need to do that.

22 A. Okay.

23 Q. I just want to ask you one question. Did you  
24 demonstrate ways to tie off --

25 A. Yes.

1 Q. -- in situations other than scaffolding?

2 A. Many options.

3 Q. That's good enough. Mr. Ramirez, all the equipment that  
4 you just showed in your demonstration, are those all items  
5 that are provided to AMS employees?

6 A. That's correct.

7 Q. When you gave your training session at Westshore Yacht  
8 Club, did Mr. Acevedo have any comment about equipment?

9 A. Yes.

10 Q. What did he say?

11 A. I asked him, this is your harness and your retractable  
12 and your safety strap provided by us. And he says no, I  
13 don't need it; I have my own, my own harness. And I'm like,  
14 so you don't need a harness provided by us? He says no, I  
15 have my own. I'm like okay. So now if you have your own, I  
16 need to inspect to make sure it's okay, because if it's not  
17 okay, I have to provide you one. You have to use our  
18 equipment. So I inspected it, and it was okay. He says I  
19 only need a 6-foot safety strap and anchor point, the one I  
20 just showed.

21 Q. Do you know whether he was provided with those items?

22 A. Say again?

23 Q. Do you know whether Mr. Acevedo was provided --

24 A. Yes.

25 Q. -- those items that he was missing?

1 A. Yes. I provided him the stuff.

2 Q. Mr. Ramirez, during your training at Westshore, did you  
3 explain to the employees who attended what would happen if an  
4 employee was caught by the Company not using fall protection?

5 A. Yes, I did explain to everyone that if somebody gets  
6 caught working at 6 foot or higher without any fall  
7 protection violation, when they were exposed to a fall, they  
8 will be terminated according to our policy, zero tolerance on  
9 fall protection.

10 Q. On that subject, Mr. Ramirez, what would happen if a  
11 violation of fall protection was witnessed by somebody not  
12 with AMS?

13 MS. WALKER: Objection, calls for speculation.

14 JUDGE ROSAS: Repeat the question.

15 MR. THOMAS: Sure. I said what would happen if a fall  
16 protection violation was witnessed by someone not with AMS?

17 JUDGE ROSAS: By someone other than AMS?

18 MR. THOMAS: Correct.

19 JUDGE ROSAS: Sustained. You may want to rephrase.

20 Q. BY MR. THOMAS: Has there come a time where a fall  
21 protection violation was reported to AMS when AMS didn't see  
22 it?

23 A. Yes.

24 Q. All right. What is the Company's response -- what was  
25 the Company's response to that situation?

1 A. Because we didn't observe that, the employee, he's got  
2 to go through a process to that company rule, which is their  
3 report and their rule, which is either send them home 1 day  
4 or 2 days, so whatever their rule is. But if we don't  
5 observe the employee, we can't give the employee the  
6 termination when we don't observe it, somebody else did.

7 Q. All right. Mr. Ramirez, just a couple more questions on  
8 this particular subject. Did employees who attended your  
9 training at Westshore Yacht Club have an opportunity to ask  
10 questions?

11 A. Yes.

12 Q. All right. Were there any questions from either  
13 Luis Acevedo or Walter Stevenson?

14 A. Yes.

15 Q. What were those questions?

16 A. How high they need to be tied off, how to -- how they  
17 had to be tied off.

18 Q. Let me clarify. Can you name the person who asked you  
19 those questions?

20 A. Yes.

21 Q. Who was it?

22 A. Luis Acevedo. Also Henry Smalls, Mr. Stevenson, Tim --  
23 I don't really remember his name. Tim Bryant, Bryant.

24 Q. Let me ask you this question. Did you answer all of the  
25 questions that were put to you during the training?

1 A. Yes.

2 Q. All right. Let's go now to May the 16th, 2016. Was  
3 there a situation that was brought to your attention that day  
4 that involved fall protection?

5 A. On Westshore? You said 2/9/16?

6 Q. On May the 16th --

7 A. May.

8 Q. -- 2016, was there a situation involving fall protection  
9 that was brought to your attention?

10 A. I don't remember, I don't remember that.

11 Q. All right. Let me see if I can refresh your  
12 recollection. Were you contacted by Mr. Feliz that day about  
13 something that had happened at Westshore Yacht Club?

14 A. Yes.

15 Q. All right, let's take it from there. What did Mr. Feliz  
16 tell you?

17 A. At Westshore?

18 Q. Yes, sir.

19 A. To go over there and inspect the job, the project.

20 Q. All right. Did he tell you about any fall protection  
21 violation that had happened that day?

22 A. At Westshore?

23 Q. Yes, sir. Oh, excuse me, let me back up. I'm confusing  
24 you with the jobs. Let me back up. On May the 16th, 2016,  
25 were you contacted by Mr. Feliz about anything that happened

1 at the University of Tampa?

2 A. University of Tampa, yeah, that's correct.

3 Q. That was a bad question. All right, let's take it from  
4 there. What did Mr. Feliz tell you?

5 A. He called me. I'm driving heading to a job, to do a job  
6 inspection. When he called me, he says there's been an issue  
7 at the University of Tampa, a fall protection issue. He  
8 described to me to go over there and investigate what  
9 happened, the details. So I immediately headed that way. I  
10 got there; it was like past 12:00. When I got there, I asked  
11 Mr. Brent, the supervisor on site, what happened. So he  
12 explained to me that one of our supervisors observed this  
13 gentleman, about the violation. Then he reported it to him.

14 And then I called back Alex on what happened, that they  
15 weren't tying off properly. So I was instructed by my  
16 director, Aleksei Feliz, to send them home for the remainder  
17 of the day and make them go over and sign a piece of paper  
18 for the report, until Alex and Mr. Ron Karp find out what  
19 were they going to do with those employees.

20 Q. All right, let me stop you there. That's a lot of  
21 territory. Before you went out to the University of Tampa  
22 jobsite, did you bring any documents with you?

23 A. Yes.

24 Q. All right. What did you bring with you?

25 A. A piece of paper about incident investigation.

1 Q. All right. When you first spoke to Mr. Feliz, did he  
2 indicate anything about training?

3 A. Yes.

4 Q. What is it that he indicated to you?

5 A. The first thing he says, are these two employees being  
6 trained on fall protection? And I'm like, can you provide me  
7 their names? And he says, yeah, Mr. Stevenson and  
8 Mr. Luis Acevedo. And I'm like, yes, that's correct, I  
9 trained them myself on fall protection.

10 Q. All right. And let's pick up from there. You testified  
11 you went to the jobsite, and what did you do once you got to  
12 the jobsite? What was the first thing you did?

13 A. So when I got to the jobsite, I went and talked to  
14 Mr. Acevedo and Mr. Stevenson, and I got in front of them,  
15 and I asked them in a nice way, do you guys remember when I  
16 trained you guys at Westshore project on fall protection?  
17 And they said, oh, yeah, yeah. Now we remember. I'm like,  
18 yeah, because remember, I still have -- you guys signed the  
19 piece of paper here where we went like -- we spent like an  
20 hour and 15 minutes on training. And then that's when they  
21 realized, because I believe they were saying that nobody  
22 trained them on fall protection. So that's why I --

23 Q. You testified you also talked to one of the foremen on  
24 the jobsite. Do you recall who it was you talked to?

25 A. Mr. Brent.

1 Q. All right. And that would be Mr. Brent McNett?

2 A. Yes.

3 Q. All right. And what did Mr. McNett tell you?

4 A. That they were tying off improperly.

5 Q. Did you see the scaffolding where Mr. Acevedo and  
6 Mr. Stevenson were working?

7 A. Yes.

8 Q. Was there a place to tie off?

9 A. Yes.

10 Q. Would it have been appropriate for them to tie off to  
11 that scaffolding?

12 A. Yes.

13 Q. Did they have all the equipment they needed?

14 A. Yes.

15 Q. What did you do after that?

16 A. That's when I was -- that's when I called Alex, my  
17 supervisor, and explaining that yes, they were in a fall  
18 protection violation by not being tied off properly. So I  
19 was instructed by him to go over the incident report, make  
20 them sign, and they said that -- they told me, they said  
21 yeah, we screwed up. So I'm like, okay. Well, you got to  
22 sign this piece of paper, and I'm going to send you home for  
23 the remainder of the day.

24 Q. When you got to the jobsite, did you see how Mr. Acevedo  
25 and Mr. Stevenson were tied off?

1 A. When I got to it, no.

2 **(Respondent's Exhibits 15 and 16 marked for identification.)**

3 Q. BY MR. THOMAS: Let me draw your attention to what we  
4 have marked as Respondent's Exhibits 15 and 16. They're in  
5 that book there, if you would take a moment to find them and  
6 look at them.

7 A. Fifteen?

8 Q. Fifteen and then number 16.

9 A. Okay.

10 Q. Do you recognize what those are?

11 A. Yes.

12 Q. What are those?

13 A. These are the reports that I was instructed by my  
14 supervisor, Aleksei Feliz, to go over to Mr. Acevedo and  
15 Mr. Stevenson.

16 Q. Is that your handwriting on these forms?

17 A. That's correct.

18 MR. THOMAS: We'd move the admission of Respondent's  
19 Exhibits 15 and 16 into evidence.

20 MS. LEONARD: Your Honor, I believe there's no objection  
21 from the General Counsel except that they are redundant  
22 insofar as they've already been admitted as General Counsel's  
23 Exhibits 9 and 10. Or 5 and 6.

24 MR. THOMAS: Let me just confirm, Your Honor, if they  
25 have, in fact --

1 JUDGE ROSAS: That's okay, it doesn't matter.

2 MS. LEONARD: Okay.

3 JUDGE ROSAS: Any objection?

4 MS. WALKER: No objection.

5 JUDGE ROSAS: Oh, they're already in, so --

6 MR. THOMAS: If they are, in fact, already in as General

7 Counsel exhibits, then we'll withdraw.

8 JUDGE ROSAS: Do you want to withdraw?

9 MR. THOMAS: We'll withdraw it.

10 JUDGE ROSAS: Okay.

11 **(Respondent's Exhibits 15 and 16 withdrawn.)**

12 MR. THOMAS: All right.

13 JUDGE ROSAS: So what are they? He was referring to

14 what exhibits for the record?

15 MR. THOMAS: Respondent's 15 and 16.

16 MS. LEONARD: General Counsel's 5 and 6.

17 JUDGE ROSAS: Okay.

18 Q. BY MR. THOMAS: Now, Mr. Ramirez, are these the

19 documents that you presented to Mr. Acevedo and Mr. Stevenson

20 to sign?

21 A. Yes.

22 Q. If you'll look at the one -- well, first of all, look at

23 the one for Mr. Acevedo.

24 A. Um-hum.

25 Q. Is that your signature down there?

1 A. That's correct.

2 Q. Oh, excuse me. Is that your printed name?

3 A. Yes.

4 Q. All right. If you'll look at --

5 A. Well, that's also my signature, too.

6 Q. Okay. If you'll look at the one for Mr. Stevenson, that  
7 one's not signed, is it?

8 A. No.

9 Q. Is there a reason why it isn't, that it's not signed by  
10 you?

11 A. No, I probably forgot to sign it.

12 Q. When these documents say sent home for remainder of day,  
13 what does that mean, sent home for remainder of day?

14 A. That means that I sent them home for the remainder of  
15 the day, and then I explain to them -- to my supervisor  
16 Aleksei and Mr. Ron Karp will decide what were they going to  
17 do with those employees.

18 Q. Are people paid for the remaining part of the day when  
19 they're sent home?

20 A. I don't remember.

21 Q. All right. After you spoke to Mr. Feliz on the phone  
22 and made the report, as you testified, did you have anything  
23 else to do with this situation that day?

24 A. Like after this all happened?

25 Q. Correct.

1 A. Just to report it to my office and that was my -- that  
2 was --

3 Q. Did you show the training paperwork to Mr. Feliz?

4 A. I did.

5 Q. Mr. Ramirez, we're going to shift gears and talk about a  
6 couple of other things. There should be a stack of papers in  
7 front of you that are General Counsel exhibits, and they'll  
8 say GC on them.

9 JUDGE ROSAS: Which ones are you referring to?

10 MR. THOMAS: We're going to start and look at General  
11 Counsel Exhibit 8(d) in evidence.

12 THE WITNESS: Okay.

13 MR. THOMAS: And Mr. Ramirez, you'll see there a tab on  
14 the side with a number, and then if you'll look down at the  
15 bottom corner, there'll be the number with a letter in  
16 parentheses.

17 JUDGE ROSAS: 8(d).

18 MR. THOMAS: 8(d), Your Honor. It says General Counsel  
19 Exhibit 8(d).

20 JUDGE ROSAS: Okay.

21 Q. BY MR. THOMAS: Take a moment to look at that,  
22 Mr. Ramirez.

23 A. Yes.

24 Q. And just let us know when you're ready.

25 A. Okay.

1 Q. All right. Mr. Ramirez, have you seen that document  
2 before?

3 A. Yes.

4 Q. What is that document?

5 A. It's the fall protection report by Hensel Phelps.

6 Q. Is that your signature down here about two-thirds of the  
7 way down the page?

8 A. Yes.

9 Q. All right. Did you sign this document on or about June  
10 the 24th, 2015, which is the date at the top in the upper  
11 right-hand corner?

12 A. Yes.

13 Q. Is anything else on this General Counsel Exhibit 8(d)  
14 your handwriting?

15 A. Yes, it is.

16 Q. All right, what is your handwriting there?

17 A. He was working on Building 2, second -- third floor.  
18 Kind of dark. Third floor, on the outside wall, inside,  
19 grouting with concrete -- he was supposed to fall with --

20 Q. Mr. Ramirez, you don't need to read it. What else on  
21 this document is your handwriting?

22 A. My signature.

23 Q. Your signature. Did you write, right here, this  
24 narrative about what happened?

25 A. Yeah, according to the person who was in violation and

1 according to the safety guide, Hensel Phelps.

2 Q. Somebody else told you what to write?

3 A. Somebody else told me to write that.

4 Q. All right. Who is Brandon Carollo?

5 A. He's one mason tender. He worked for us.

6 Q. All right. Who is Hensel Phelps?

7 A. It's the general contractor.

8 Q. All right. If you'll look at the top of the document,  
9 there's a place where it says job name, BCU. What does that  
10 refer to?

11 A. The University of Daytona, Bethune-Cookman University.

12 Q. All right. Did you see the incident that is described  
13 about halfway down the page and when was it told to you?

14 A. No, I didn't see it.

15 Q. You'll see right above that paragraph, there's a check  
16 mark and the words "two-day suspension."

17 A. Yes.

18 Q. All right. Is that your handwriting where it says  
19 "two-day suspension"?

20 A. Yes.

21 Q. All right. Is that discipline that you decided?

22 A. No.

23 Q. Who decided it?

24 A. The general contractor, Hensel Phelps.

25 Q. Do you know whether AMS followed through and suspended

1 Mr. Carollo for 2 days?

2 A. Yes.

3 Q. All right. Was Mr. Carollo fired for this fall  
4 protection violation?

5 A. No.

6 Q. Why not?

7 A. Because we didn't see it.

8 Q. Mr. Ramirez, there's one other thing I'd like to talk to  
9 you about, and it's also in the General Counsel's exhibits.  
10 If you would look at General Counsel's Exhibit Number 4, and  
11 there are two pages in there, 4(a) and 4(c).

12 JUDGE ROSAS: 4(c)?

13 MR. THOMAS: 4(a) and 4(c), Your Honor.

14 JUDGE ROSAS: 4(a) and 4(c).

15 Q. BY MR. THOMAS: And just tell me when you've had a  
16 chance to read those.

17 A. Okay.

18 Q. All right. If you'll start with 4(c), what is this  
19 document?

20 A. I got to the Westshore project for a job inspection.

21 Q. Let me stop you right there. Before you tell me what  
22 happened, just tell me what the document is. What type of  
23 document is it?

24 A. Oh, it's an employee warning notice.

25 Q. All right. Is this an e-mail? Are you looking at 4(c)?

1 If you look down at the very bottom, they'll be handwritten.  
2 And I think we're on different pages, and that's why we're  
3 miscommunicating.

4 A. 4(c). Okay. Yes.

5 Q. All right, what is that document?

6 A. I e-mailed my supervisor, Aleksei Feliz, when I observed  
7 Mr. Bryant working by a leading edge.

8 Q. All right, let me stop you there. This time I think you  
9 sent it to Mr. Feliz on March the 8th, 2016?

10 A. Um-hum. Yes.

11 Q. All right. Before we go on to talk about why you sent  
12 that e-mail, if you'll look at 4(a) and tell us if you  
13 recognize that document.

14 A. Yes.

15 Q. All right, what is that?

16 A. It's a report by me explaining what happened on that  
17 day.

18 Q. All right. Who is Timothy Bryant?

19 A. He's a mason.

20 Q. All right. Would you tell the Judge what, if anything,  
21 led you to create these documents in 4(a) and 4(c)?

22 A. For information.

23 Q. All right. Is there something that you saw that led you  
24 to create the documents?

25 A. Yes.

1 Q. What is it that you saw?

2 A. I saw Mr. Tim working higher than 6 feet exposed to a  
3 fall.

4 Q. All right. Did you see that happening on March the 8th,  
5 2016?

6 A. Yes.

7 Q. If you'll look at the e-mail which is General Counsel's  
8 Exhibit 4(c) in evidence, if you look at the first line it  
9 says the mason, Tim Bryant, "was observed laying block on a  
10 leading edge." Do you see that?

11 A. Yes.

12 Q. And it says "was observed." Who did the observing?

13 A. Me.

14 MS. WALKER: Objection, he's asked that question.

15 JUDGE ROSAS: He asked that question?

16 MS. LEONARD: Asked and answered, yes.

17 MS. WALKER: He's asked and answered --

18 MS. LEONARD: Two or three questions ago.

19 MS. WALKER: Yes.

20 JUDGE ROSAS: He's referring to a separate document.

21 You're referring now to 4(c), right?

22 MR. THOMAS: Correct.

23 JUDGE ROSAS: And what it states. Overruled.

24 Q. BY MR. THOMAS: Mr. Ramirez, I guess we'll go back to  
25 that question. It says "was observed." Who did the

1 observing?

2 A. Me.

3 Q. All right. And it says laying block on a leading edge.

4 Would you explain what that means?

5 A. He was laying block and he had a fresh, green wall in  
6 front of him, and he wasn't connected to his anchor point.

7 Q. All right. After you observed that, what did you do  
8 first? Did you create this e-mail, or did you create the  
9 warning document?

10 A. I created the document and the e-mail and informed my  
11 supervisor, Aleksei.

12 Q. Did Mr. Feliz tell you to do anything?

13 A. He told me to send them home for the remainder of the  
14 day.

15 Q. All right. Did you do that?

16 A. Yes.

17 Q. All right. If you'll look at Exhibit 4(a), did  
18 Mr. Bryant sign this?

19 A. Yes, that's correct.

20 Q. Did you see him sign it?

21 A. Yes.

22 Q. Was Mr. Bryant in violation of the Company's fall  
23 protection policy?

24 A. Yes.

25 Q. If you'll look at General Counsel Exhibit 4(a), the

1 box -- there's a box next to the word "Dismissal" that has an  
2 X in it.

3 A. Yes.

4 Q. All right. What can you tell us about that?

5 A. I made a mistake right there. I was supposed to check,  
6 I was supposed to check "Suspension," and I checked  
7 "Dismissal" by an accident because I sent him home. I didn't  
8 terminate him, I sent him home.

9 Q. Did you ever see Tim Bryant working on an AMS jobsite  
10 again?

11 A. No.

12 Q. Did you have any further involvement with Mr. Bryant's  
13 employment?

14 A. No.

15 Q. All right. Mr. Ramirez, when you do fall protection  
16 training, are you ever called upon to communicate in another  
17 language?

18 A. Yes.

19 Q. What language do you communicate in?

20 A. Spanish.

21 Q. Are you fluent in Spanish?

22 A. Yes.

23 Q. If an employee has a question in Spanish, are you able  
24 to answer in Spanish?

25 A. Yes, sir.

1 Q. Do you provide any kind of safety training to AMS  
2 foremen?

3 A. Yes.

4 Q. All right. Is the training the same as you indicated  
5 before in Respondent's Exhibit 7 in evidence?

6 A. Yes.

7 Q. Mr. Ramirez, are you familiar with an individual by the  
8 name of Lulio Salgado?

9 A. Julio Salgado?

10 Q. Lulio with an L. Lulio Salgado.

11 A. Lulio. I don't remember. We have many employees.

12 Q. All right. Are you familiar with an employee by the  
13 name of Omar Walker?

14 A. Omar Walker? I remember. It sounds familiar that name,  
15 Omar Walker.

16 Q. All right. Do you recall, is he still employed by AMS?

17 A. Don't know.

18 Q. All right. Let me see if I can't find a document to  
19 show to refresh your recollection --

20 A. Okay.

21 MR. THOMAS: If I may approach, Your Honor, to refresh  
22 the witness's recollection?

23 Q. BY MR. THOMAS: Mr. Ramirez, if you would review that  
24 document, and after you're done reviewing it, let me know.

25 A. (Reviews document.) Yes, this is an incident that took

1 place at one of our projects in Sarasota Flats.

2 Q. All right. Having reviewed that particular document,  
3 would you please explain what it is?

4 MS. LEONARD: What document is it?

5 MR. THOMAS: It's a document we just had from the  
6 personnel files that were produced pursuant to the subpoena.

7 MS. LEONARD: Is it --

8 MR. THOMAS: It's not entered into evidence. All right,  
9 I'll take it back.

10 THE WITNESS: Yeah.

11 Q. BY MR. THOMAS: Having read that, Mr. Ramirez, is your  
12 recollection refreshed as to Mr. Walker?

13 MS. LEONARD: I believe it's GC-18.

14 MR. THOMAS: Is that in evidence? Maybe it is in  
15 evidence. Just a moment, Your Honor.

16 **(Pause.)**

17 MR. THOMAS: That is in evidence. All right.

18 THE WITNESS: Thank you.

19 Q. BY MR. THOMAS: Now, with clarification from the General  
20 Counsel, that is General Counsel's Exhibit 18 in evidence.  
21 Would you explain, or having had your memory refreshed, would  
22 you explain what happened to Mr. Walker?

23 A. I received a call from Calvin Lindo, which is one of our  
24 supervisors, too, on that particular project, about what  
25 happened with Mr. Omar Walker with the forklift.

1 Q. All right. And what did you do in response to receiving  
2 that call?

3 A. I stopped immediately what I was doing, and I headed to  
4 the job and pulled Mr. Omar Walker to the side and asked him  
5 what happened, and he explained to me exactly what Mr. Calvin  
6 Lindo told me about what happened.

7 Q. Did you consider -- when you say what happened, what was  
8 it that Mr. Walker did?

9 A. He was driving the forklift where they bundle number  
10 five rebar.

11 MS. LEONARD: Objection, Your Honor, the witness is just  
12 reading the document instead of reciting from memory.

13 JUDGE ROSAS: Okay. You're asking him for his  
14 recollection?

15 MR. THOMAS: Correct, I'm asking from his recollection  
16 of what he was told when he got to the jobsite.

17 JUDGE ROSAS: Flip the document, turn it over, turn it  
18 over. Go ahead.

19 THE WITNESS: Okay.

20 JUDGE ROSAS: What do you recall?

21 Q. BY MR. THOMAS: What do you remember being told when you  
22 arrived at the jobsite?

23 A. I was told by Mr. Lindel that this employee, Omar  
24 Walker, he was driving with a number five rebar bundle on his  
25 fork, and he's trying to move out, and the tail of the

1 machine tipped over; it went up on in the air. And as he was  
2 trying to release the weight, the machine went down in such a  
3 way that it went too hard in the back of the machine.

4 Q. Mr. Ramirez, let me ask you this question: Did this  
5 incident have anything to do with fall protection?

6 A. No.

7 Q. Did it involve a safety violation?

8 A. Yes.

9 Q. Were there any consequences for Mr. Walker's employment?

10 A. No.

11 Q. There were no consequences?

12 A. No.

13 Q. Was he disciplined at all?

14 A. There's consequences, yes, like refreshment and the  
15 proper to drive the heavy equipment, which is the forklift.

16 Q. All right. Let me go to Mr. Salgado and let me see if  
17 this has been entered into evidence. Just a moment. I'll  
18 show you what's been entered into evidence as General  
19 Counsel's 19. It should be in front of you in the stack of  
20 documents, GC. There will be a number 19.

21 MS. LEONARD: For clarification, there's a group of 15  
22 through 19, with respect --

23 JUDGE ROSAS: I don't think we have -- if it is, it's  
24 misplaced. I'll give him my stack. Which one do you want  
25 him to see, 15?

1 MR. THOMAS: I'd like him to see Exhibit 19, Your Honor.

2 JUDGE ROSAS: Nineteen and its subdivisions?

3 MR. THOMAS: Your Honor, it's a three-page exhibit. I  
4 don't know if it's subdivided.

5 JUDGE ROSAS: 19(a), (b), and (c).

6 MR. THOMAS: Correct. If it is, then three pages, yes.

7 JUDGE ROSAS: Okay.

8 Q. BY MR. THOMAS: All right, Mr. Ramirez, would you please  
9 just review that and let me know when you're done?

10 A. Yes, sir.

11 A. (Reviews document.) Okay.

12 Q. All right. Having looked at those documents,  
13 Mr. Ramirez, let me first direct you to the third one, which  
14 should be General Counsel Exhibit 19(c) in evidence. Do you  
15 recognize that?

16 A. Yes.

17 Q. All right, what is that?

18 A. It's an e-mail.

19 Q. Did you send that e-mail?

20 A. Yes.

21 Q. All right. Who did you send it to?

22 A. To Yolanda and Alex Feliz.

23 Q. All right. Who is Yolanda Phelps?

24 A. One of our office secretary that handles --

25 Q. All right. Let me ask you this question. You can turn

1 that over for a moment. Does that refresh your recollection  
2 as to what happened with Mr. Salgado?

3 A. He was cutting rebar without face shield protection, and  
4 he was told by the GC guy to put on his face shield, and he  
5 refused to put on his face shield, and he refers to the GC on  
6 site with his bad attitude. But he refused to wear his face  
7 shield.

8 Q. All right. Did this particular incident involving  
9 Mr. Salgado, did that involve fall protection in any way?

10 A. No.

11 Q. Were there any consequences to Mr. Salgado's employment  
12 after this incident?

13 A. Yes.

14 Q. What were those consequences?

15 A. He was terminated by his supervisor, main supervisor,  
16 Miguel.

17 Q. Let me ask you this question. Does AMS have a zero  
18 tolerance policy for a forklift accident?

19 A. No.

20 Q. Does AMS have a zero tolerance policy for a face shield  
21 safety violation?

22 A. No.

23 MR. THOMAS: That's all I have. You're now going to be  
24 questioned by the attorneys for the --

25 THE WITNESS: Yes, sir.

1 MR. THOMAS: -- General Counsel and --

2 JUDGE ROSAS: You're done. Cross-examination, GC?

3 MS. LEONARD: Could we have a few minutes to confer?

4 JUDGE ROSAS: Sure.

5 MS. LEONARD: Thank you.

6 JUDGE ROSAS: A 5-minute break.

7 **(Off the record from 1:59 p.m. to 2:07 p.m.)**

8 **JUDGE ROSAS: On the record.**

9 **CROSS-EXAMINATION**

10 Q. BY MS. LEONARD: Good afternoon, Mr. Ramirez.

11 A. Good afternoon.

12 Q. My name is Caroline Leonard. I am Counsel for the  
13 General Counsel. That means I'm the attorney representing  
14 the Labor Board in this proceeding, and I have a few  
15 questions for you to follow up on --

16 A. Okay.

17 Q. -- Mr. Thomas's questions. Why did you conduct a  
18 training at the Westshore Yacht Club on February 9th, 2016?

19 A. Because we had some employees that need to be trained on  
20 fall protection.

21 Q. Okay. How did you know that you had some employees that  
22 need to be trained on fall protection?

23 A. Because I was instructed by my supervisor, Aleksei  
24 Feliz, to go and instruct, train those employees on fall  
25 protection.

1 Q. Okay. And you said there were only five to six  
2 employees at that training, correct?

3 A. Yes.

4 Q. If you could turn in that binder to Respondent's Exhibit  
5 7 and go straight to the end where the signatures are. And  
6 actually just the very last page. Sorry, the second to the  
7 last page.

8 A. Okay.

9 Q. Do you see the date of those signatures there?

10 A. Yes.

11 Q. Okay. Which of these employees were at the training  
12 that day?

13 A. Luis Acevedo.

14 Q. I'm sorry, Mr. Acevedo is where on this page?

15 A. Page 10.

16 Q. I'm on page 13.

17 A. Okay. Okay.

18 Q. Okay. So which of the employees on page 13 were at the  
19 training that day?

20 A. Mr. Stevenson, John, Mr. Randy, Mr. Eric, Mr. James,  
21 Mr. Anderson, Mr. James, Mr. Darwin, and Mr. Ernest, and  
22 Samuel.

23 Q. Okay. And turning back to page 10, which of the  
24 employees on page 10 were at the training that day?

25 A. None. That's a different date.

1 Q. None of the people on page 10 were at the training that  
2 day?

3 A. Oh, I'm sorry, I'm on 11.

4 Q. Okay.

5 A. Mr. Luis Acevedo, David Acevedo, Emiler,  
6 Flynn Gamble, Mr. Tim, Mr. Henry Smalls. That's it.

7 Q. Okay. Thank you very much. Of all the names that you  
8 just recited from pages 10 and 13, do you know all of those  
9 people?

10 A. It has been a while ago. I only remember new faces.

11 Q. Um-hum.

12 A. Mr. Acevedo, David Acevedo, Flynn Gamble, Tim,  
13 Henry Smalls. On this page?

14 Q. Yeah. And then on page 13?

15 A. Mr. Stevenson, Mr. Darwin Coiner. That's all I can  
16 remember.

17 Q. Okay. Do you recall seeing all of the people who signed  
18 their name on February 9th at the training on February 9th?

19 A. Yes, all of them.

20 Q. Okay. Thank you very much. And in your bag of props  
21 over there, I believe you mentioned you had an anchor.

22 A. That's correct.

23 Q. Could you pull out that anchor, please?

24 A. Yes, ma'am.

25 Q. Do you have more than one anchor in there?

1 A. More than one anchor?

2 Q. Yes.

3 A. Yes.

4 Q. Could you pull out all of the anchors, please?

5 A. Yes. I believe that's all I have.

6 Q. Thank you, Mr. Ramirez. Could you just take them in  
7 whatever order you like and explain what each of these  
8 anchors are and where they would attach to and how an  
9 employee would attach themselves to that anchor?

10 A. Yes, ma'am. When I demonstrate to my employees the  
11 proper way to use this anchor --

12 Q. What's the name of that anchor?

13 A. Miller anchor.

14 Q. Okay.

15 A. For 5,000 pounds. I explain to them they can never  
16 remove it, the tag, and that for -- to install this 5,000  
17 pound Miller anchor, they need a three-quarter drill bit to  
18 drill into the concrete 3½ inches.

19 Q. Where would they drill into the concrete?

20 A. On a floor, on concrete columns, ceilings with concrete.  
21 And they need to be clean, the hole, and then measure the  
22 drill 3½ inches, according to the manual of the manufacturer  
23 material, and the proper way to install it, too, which is you  
24 pull it back, either down or the column or the ceiling. You  
25 put it in the hole, let it go and it locks. And that's how I

1 instruct my employees to connect their self. It's strictly a  
2 Miller anchor.

3 Q. Okay. And while we have the device you're holding with  
4 the letter G on it, I believe you referred to that as a  
5 Guardian retractor.

6 A. Yes.

7 Q. Do the employees --

8 A. Retractable.

9 Q. Retractable. Thank you. Do the employees also  
10 sometimes call that a yoyo?

11 A. Yes.

12 Q. Okay, thank you very much. The next anchor, please.

13 A. Yes. This is another type of anchor that is used to  
14 drill into the concrete or the wall.

15 Q. What's the name of that?

16 A. This one is called Red Head, Red Head bolt anchor.

17 Q. Okay. And let the record reflect that there is a red  
18 bolt-like device --

19 A. Um-hum. Also, this type of bolt needs to be drilled  
20 into the concrete, but this one is a little bit different  
21 than the one I just showed. This one, you need to drill it  
22 4-3/8ths bit into the concrete. I believe, because it's a  
23 bolt, it doesn't work like that one. So when you drill it,  
24 you clean the hole out well. It also requires a 3/4 drill  
25 bit to install this bolt. After it's installed, just knock

1 this into it until it locks in the hole, and then it's ready  
2 to be used. Only one person is allowed to attach from here.

3 Q. Are any of the anchors able to have multiple people  
4 attach to them?

5 A. They do make these type of anchors for 10,000-pound  
6 anchor, which is --

7 Q. Okay. And let the record reflect that Mr. Ramirez is  
8 holding one he's previously referred as the Miller  
9 5,000-pound anchor.

10 A. This is 5,000 pounds, that's correct. Only one person.

11 Q. Okay. And you're saying they make a 10,000-pound --

12 A. Ten thousand, which is two people are allowed to attach  
13 because it's 10,000 pounds.

14 Q. Okay.

15 A. And they require a 1-inch drill bit to drill the hole,  
16 and it goes deeper.

17 Q. Um-hum. Okay.

18 A. This anchor point is used to install on wood or metal.

19 Q. Does this anchor have a name, Mr. Ramirez?

20 A. This one?

21 Q. Yes.

22 A. They call it a plate anchor.

23 Q. Okay, thank you.

24 A. Yes, ma'am. When I explain to them how to use this  
25 plate anchor to my employees, I explain to them that when

1 they do that anchor on metal, it requires galvanized screws.

2 Q. Galvanized screws?

3 A. Yes.

4 Q. Okay. What is a galvanized screw?

5 A. The galvanized is designed to go into the metal.

6 Q. Okay.

7 A. And every single hole is supposed to be filled with the  
8 screws, according to the manufacturer of the metal. When  
9 they're being used in wood, they require longer screws and  
10 big, long nails, galvanized --

11 Q. Okay.

12 A. And only one person can attach to this one because  
13 they're only 5,000-pound anchor points.

14 Q. And what kind of wood would that be attached to? Where  
15 would that wood be that they would attach to?

16 A. Wood? It is the structure of the building.

17 Q. Okay.

18 A. Not just any wood.

19 Q. Okay.

20 A. You can't just attach this to 3/4 plywood. It would  
21 have to be the structure of the building.

22 Q. Okay, thank you.

23 A. This is called a Miller anchor in the wall but for  
24 hollow board.

25 Q. Hollow what?

1 A. Hollow board.

2 Q. Okay, hollow --

3 A. I don't know if you ever hear about when they install  
4 this big -- of concrete and it's like your floor, but it's  
5 hollow.

6 Q. Okay.

7 A. So that means you require another 3/4 drill bit because  
8 it's only for 5,000 pounds. Like I said, the one for 10,000  
9 requires 1 inch. This is 3/4, and as well, you pull it back,  
10 straight in, let it go, and it locks in for 5,000 pounds to  
11 the wall.

12 Q. Okay. And those are the four anchors that you trained  
13 the masons on at the Westshore Yacht Club on February 9th,  
14 2016?

15 A. Yes.

16 Q. Okay. Did you train them on any other anchors that day?

17 A. That's all I train, all those options.

18 Q. Okay. Is everything you have in your bag always  
19 everything that's in your bag?

20 A. Everything that I got in my bag what?

21 Q. Do you ever have other materials in that bag that you  
22 use to train, or is that the regular training materials you  
23 use?

24 A. Yeah, I use the 6-foot safety strap.

25 Q. Right.

1 A. The lanyard to explain that we don't use the lanyard.  
2 And they can use a safety strap which is for 5,000 pounds as  
3 well.

4 Q. Okay. Why don't you use the lanyard?

5 A. The lanyard?

6 Q. Um-hum.

7 A. The reason we don't use the lanyard, because people get  
8 confused to use it at the wrong elevation. If people get  
9 caught using one lanyard at 6-foot high, this is already  
10 6 foot. Plus, the -- is already 2 foot, so they will hit the  
11 ground.

12 Q. Okay. So are there no lanyards allowed on any AMS  
13 jobsites?

14 A. No, only retractables.

15 Q. Okay. So they're not allowed at all?

16 A. No.

17 Q. Okay. So what would happen if an -- strike that.

18 Does AMS own lanyards aside from the one that you use to  
19 show employees not to use it?

20 A. No.

21 Q. Okay. You can go ahead and pack up.

22 A. Thank you.

23 Q. We'll move on. Thank you for the demonstration.

24 A. You're welcome.

25 Q. Okay. You said that employees asked questions during

1 this meeting at the Westshore Yacht Club.

2 A. Yes.

3 Q. Can you take us through every question each employee  
4 asked?

5 A. They asked any proper way --

6 Q. No, specifically who asked each question.

7 A. Oh, Mr. Acevedo, Mr. Henry Smalls --

8 Q. No, one question at a time. Which employee asked that  
9 question?

10 A. Okay. Mr. Luis Acevedo asked what was the proper way to  
11 tie off from the anchor points.

12 Q. Okay. And what did you say to Mr. Acevedo?

13 A. So when I went through all those options, especially the  
14 anchor point, how to use it, how to tie off, how to use the  
15 6-foot safety strap.

16 Q. Okay. So Mr. Acevedo asked this question before you  
17 started the training?

18 A. As I'm conducting the training and I'm at that part,  
19 that is when he asked me the question, and I answered back to  
20 him properly.

21 Q. Okay. And what was the next question that was asked?

22 A. Mr. Henry Smalls asked me at what elevation we will need  
23 to be tied off.

24 Q. Okay. And what did you say to Mr. Smalls?

25 A. I said at 6 foot or higher, if they don't have any

1 proper way of safety rails --

2 Q. Okay.

3 A. -- around them.

4 Q. Okay. And what was the next question that was asked?

5 A. Mr. Stevenson asked me what happens if they get caught  
6 on a fall protection violation. So I answered him that we  
7 have zero tolerance fall protection policy, and they will get  
8 terminated if they will get caught in a fall protection  
9 violation.

10 Q. And what was the next question that was asked?

11 A. I believe that's all I can remember.

12 Q. Okay. Why do you remember those three questions in  
13 particular?

14 A. Because when I asked everybody, anybody has any  
15 questions, most of the guys, they've been on these  
16 construction jobs for a long time, and they work for  
17 different companies, and they don't have a safety program  
18 like us. That's why they ask that question to make sure  
19 they've been trained and told by the safety department where  
20 and how to be tied off and at what height.

21 Q. Okay. So you don't think anyone else asked any other  
22 questions?

23 A. I don't remember.

24 Q. Okay. You don't remember whether they did, or you don't  
25 remember any more being asked?

1 A. I don't remember any more being asked.

2 Q. Okay, thank you. When you spoke to Mr. Feliz on  
3 May 16th, 2016, did you speak to him on the phone in English  
4 or in Spanish?

5 A. In English.

6 Q. Okay. Why did you speak to him in English?

7 A. Because that's our language.

8 Q. Okay. Your first language is Spanish, correct?

9 A. It's Spanish. That's how we communicate, in English.

10 Q. Okay. Do you ever communicate with employees in  
11 Spanish?

12 A. Yes.

13 Q. Did you ever communicate with employees in Spanish at  
14 the Westshore Yacht Club training?

15 A. Yes.

16 Q. Okay. Who did you communicate with in Spanish that day?

17 A. Not at that training, not at that training.

18 Q. Oh, okay.

19 A. Not at that training. But there were employees on that  
20 particular job, because we were doing the concrete and most  
21 of the concrete division, they're Spanish. So when I used to  
22 go there and do my training on fall protection, it was in  
23 Spanish because they don't understand English. They  
24 understand English so much.

25 Q. Okay, thank you. And so can you describe everything

1 that happened on May 16th from the moment you arrived at the  
2 University of Tampa jobsite, in order? Exactly what you did.

3 A. Yes.

4 MR. THOMAS: I object, the witness has already testified  
5 to what happened on direct. I don't think there's any need  
6 to go over it and have another narrative description of what  
7 occurred.

8 JUDGE ROSAS: Overruled. You can answer. What happened  
9 on May 16th?

10 THE WITNESS: May 16th, I received a call from my  
11 supervisor, Aleksei Feliz, that there was an issue of fall  
12 protection on the job, and he instructed me to go and find  
13 out the details and what happened. So I immediately went  
14 over there, and I went and looked at the scaffold where they  
15 were supposed to be, the violation. I look at the scaffold,  
16 and then I came and talked to Mr. Brent.

17 Q. BY MS. LEONARD: Okay. What did you see when you looked  
18 at the scaffolding?

19 A. That there were places where they're at risk to fall at  
20 the elevation they were working.

21 Q. Okay. And did you see -- did you observe any other  
22 conditions about the scaffold?

23 A. Yes.

24 Q. What else did you observe?

25 A. I observed that there were anchor points available to

1 tie off properly.

2 Q. Okay. What anchor points were those?

3 A. The scaffold frame, the structure of the scaffold.

4 Q. Was there anything else you observed about the scaffold  
5 that day?

6 A. It has a ladder to get access, proper access.

7 Q. Okay. That is all for that. Thank you very much. And  
8 so when you went to speak to Mr. McNett, what did you talk  
9 about?

10 A. I asked him what happened. So he explained to me that  
11 they observed these employees not tying off properly, and he  
12 told me that they tell him that nobody trained them on fall  
13 protection, ever.

14 Q. And what did you say?

15 A. So I went okay. So I went and talked to Mr. Acevedo and  
16 Mr. Stevenson, and I asked both. I'm like, Mr. Acevedo and  
17 Mr. Stevenson, do you guys remember when I trained you guys  
18 on fall protection on the Westshore Yacht Club project on  
19 February the 9th of 2016? And I asked them, did I spend  
20 about an hour and 15 minutes going through all the training?  
21 And they look at me -- without me showing them the book. I  
22 had the book in my hand. I haven't shown their signatures.  
23 So they bow down, and they say, yeah, yeah, you did. That's  
24 both of them. Then I asked Mr. Stevenson, and he said yeah,  
25 you did.

1 Q. And what did you do next?

2 A. I'm sorry?

3 Q. What did you do next?

4 A. I showed them the book and the project, and then I  
5 showed them their signatures where they attended to my fall  
6 protection training on that day.

7 Q. And what did you do next?

8 A. I called my supervisor, and I explained to him what  
9 happened, and I got instructed by my supervisor to send them  
10 home for the remainder of the day.

11 Q. Did you call Mr. Feliz while you were still standing  
12 next to Mr. Acevedo and Mr. Stevenson?

13 A. Yes, I was about 15, 20 feet away from them.

14 Q. Okay. Were they still on the scaffolding at that point?

15 A. No, they were on the ground.

16 Q. Okay. When you inspected the scaffolding before you  
17 talked to Mr. McNett, were Mr. Stevenson and Mr. Acevedo on  
18 the scaffolding?

19 A. No.

20 Q. Why not?

21 A. They were already done.

22 Q. Okay. Do you know how they came to come down from the  
23 scaffolding?

24 A. No, because, like I say, I drove there. My supervisor  
25 called me to go over there. By the time I arrived, they were

1 already done.

2 Q. Okay. So what was the first time you -- what was the  
3 first time that day that you heard there was a fall  
4 protection violation at the University of Tampa?

5 A. When my supervisor called me over the phone and  
6 explained to me what happened.

7 Q. What time of day was that?

8 A. It was before 12:00, because by the time I arrived to  
9 the job, it was past 12:00.

10 Q. Okay. How long before 12:00 was it?

11 A. I'm going to say about 11:00. I'm going to say 11:00 in  
12 the morning.

13 Q. Okay. Had you talked to Mr. Feliz at all earlier in the  
14 day?

15 A. Before that happened?

16 Q. Um-hum.

17 A. Don't remember.

18 Q. Okay. Okay, if you could turn in the stack underneath  
19 the binder there, back to General Counsel's Exhibit 8(d).  
20 It's Mr. Carollo's warning notice.

21 A. 8(d)?

22 Q. 8(d), yes. And it will be after that whole stack. It  
23 will be the next tab. Yeah. And then 8(d) will be the  
24 second to the last one. Okay. So you testified --

25 A. Will you give me a second so I can review?

1 Q. Oh, sure. You can review it again.

2 A. Thank you.

3 Q. Um-hum.

4 A. (Reviews document.) Okay.

5 Q. You testified earlier when Mr. Thomas was questioning  
6 you that you wrote this section and the explanation; is that  
7 correct?

8 A. Right.

9 MR. THOMAS: Objection, that's not what the testimony  
10 was.

11 JUDGE ROSAS: Repeat the question.

12 Q. BY MS. LEONARD: Is that your handwriting in the  
13 explanation section?

14 A. That's my handwriting.

15 Q. So you wrote what is in the explanation section,  
16 correct?

17 A. I wrote that by somebody else telling me what happened.

18 Q. Correct, but you wrote it down?

19 A. I wrote it down.

20 Q. Okay. The part in parentheses on the bottom line that's  
21 in all caps, did you write that part? Where it says "Fall  
22 protection" and "Brandon may return on Friday."

23 A. It's kind of dark in here.

24 Q. Um-hum. But is that your handwriting?

25 A. Brandon -- it says Brandon may -- I can't read it.

1 JUDGE ROSAS: Is that your handwriting?

2 THE WITNESS: That is my handwriting.

3 Q. BY MS. LEONARD: That part is your handwriting as well?

4 A. Yes.

5 Q. Okay. Why were you asked to write it?

6 A. The other contractor is forcing us to fill their

7 report --

8 Q. Okay.

9 A. -- about what happened. So I'm standing right next to  
10 them, and they're making me write in what they saw.

11 Q. Okay. And this is in -- at the top it says

12 subcontractor notice. So this is a notice --

13 A. That's their report.

14 Q. -- from Hensel Phelps to the subcontractor AMS, correct?

15 A. That's correct.

16 Q. Okay. And then you signed it?

17 A. Yes.

18 Q. Okay. How often do you e-mail Mr. Feliz?

19 A. Every time I do an inspection and I found any problems  
20 or issues about anything, I report back to him.

21 Q. Did you ever send him an e-mail about Mr. Stevenson and  
22 Mr. Acevedo?

23 A. I don't remember. I don't remember.

24 MS. LEONARD: I have no further questions.

25 JUDGE ROSAS: Charging Party?

1 MS. WALKER: Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 Q. BY MS. WALKER: Mr. Ramirez, my name is Kim Walker. I  
4 am counsel for the Petitioner/Union in this case. I have a  
5 few questions for you. I'll try not to overlap or duplicate  
6 General Counsel's questions.

7 A. Okay.

8 Q. When did you become safety coordinator at AMS?

9 A. I want to say -- I'm going to say about a year and a  
10 half.

11 Q. And prior to that time, what position did you hold at  
12 AMS?

13 A. Before that?

14 Q. Yes.

15 A. I was the safety coordinator on site on the prior --  
16 where I was the --

17 Q. And are there other individuals at AMS who serve in that  
18 position?

19 A. My position?

20 Q. Well, let me ask it a different way. Is each jobsite of  
21 AMS assigned a safety coordinator?

22 A. On some of the projects, yeah, we put a safety  
23 coordinator.

24 Q. Okay. And how do you determine which jobsites will  
25 require a safety coordinator on site as opposed to not having

1 one on site?

2 A. Depending on the amount of manpower.

3 Q. What's the threshold of manpower that requires a safety  
4 coordinator on site?

5 A. I can't answer that because my supervisor, he's the one  
6 that can answer that.

7 Q. Okay. And that's Mr. Feliz?

8 A. That's correct.

9 Q. So Mr. Feliz determines whether or not there will be a  
10 safety coordinator on the jobsite?

11 A. That's correct.

12 Q. Was there a safety coordinator on the jobsite at  
13 Westshore Yacht Club?

14 A. That would be the supervisor.

15 Q. Okay. So a supervisor could also double as a safety  
16 coordinator on a jobsite; is that correct?

17 A. That's correct.

18 Q. So at the Westshore Yacht Club, that would've been  
19 Coy Hale; is that correct?

20 A. That's correct.

21 Q. And was there a safety coordinator on the jobsite at the  
22 University of Tampa?

23 A. That was Mr. Brent as well. Mr. Brent.

24 Q. Is that Mr. Brent McNett?

25 A. Yes.

1 Q. So there was not a separate safety coordinator on either  
2 of those two jobsites, correct?

3 A. No, that's correct.

4 Q. Did you ever perform work as a mason for AMS?

5 A. Yes.

6 Q. Okay. And how long did you do that?

7 A. Like I said, I got like almost 16 years for the Company.  
8 I want to say about 8 years.

9 Q. Okay. And I want to make sure I understood your  
10 testimony on direct questioning from Mr. Thomas. I thought  
11 that you had testified that part of your job responsibilities  
12 in your current position as safety coordinator is to ensure  
13 that employees properly do their job. Is that your  
14 testimony?

15 A. That's correct.

16 Q. And is that in all aspects of their job or just in  
17 regards to safety?

18 A. Just in regards to safety.

19 Q. Okay. You also testified on direct questioning from  
20 Mr. Thomas that you hold an OSHA 30 card; is that correct?

21 A. That's correct.

22 Q. When did you receive that certification?

23 A. You don't mind if I pull it out of my wallet?

24 Q. Yeah, that's fine.

25 A. Here you go.

1 JUDGE ROSAS: Do you want him to read it?

2 MS. WALKER: Please.

3 THE WITNESS: 2/16/2011.

4 Q. BY MS. WALKER: And how often do you have to get  
5 recertification on that OSHA 30 training?

6 A. This is required by OSHA just to do like a refreshment.

7 Q. How often do you have to do a refresher course?

8 A. You can do it like every year.

9 Q. Where do you usually get that training?

10 A. It could be in our office. We call the trainer to our  
11 office, or we can do it like any other place, at their  
12 office.

13 Q. So why would AMS decide to have the training, the  
14 refresher training done at their office?

15 MR. THOMAS: I'm going to object to lack of predicate  
16 knowledge.

17 MS. WALKER: Okay, I thought he answered that they would  
18 call the trainer.

19 JUDGE ROSAS: If you know. Do you know why they would  
20 do it at your office?

21 THE WITNESS: I don't know.

22 Q. BY MS. WALKER: Okay. Have you done refresher training  
23 at AMS's office?

24 A. No.

25 Q. No?

1 A. No.

2 Q. Okay. So any training that you've done or refresher  
3 training that you've had has been at another location?

4 A. Like in the field, on the field. You know, like let's  
5 say -- on the job. We call the instructor right on the job  
6 and get refreshment on the job.

7 Q. And the instructor will do -- how long does refresher  
8 training take?

9 A. It can go over about one hour, hour and a half. It's  
10 less time than going through all the 30, I know that.

11 Q. And there would be other employees of AMS that would  
12 attend that training other than you; is that correct?

13 A. Yes.

14 Q. Do any superintendents of AMS have OSHA 30 --

15 A. Yes.

16 Q. -- certifications? Who are they?

17 A. Mr. Coy Hale, Mr. Brent McNett, Mr. Danny Booth.

18 Q. Can you think of anyone else?

19 A. Not that I remember.

20 Q. You testified on direct questioning, as well as  
21 questions from the General Counsel, about training that you  
22 performed at Westshore Yacht Club on February 9th. Do you  
23 recall that testimony?

24 A. What was your question again?

25 Q. Yes. Do you recall testifying about training that you

1 performed at Westshore Yacht Club?

2 A. Yes.

3 Q. And I believe that was on February 9th of 2016?

4 A. That's correct.

5 Q. Was that training required by the general contractor on  
6 that job?

7 A. I can't answer you that because I don't know their  
8 contract, their real contract.

9 Q. Okay. So you were not given any instruction from your  
10 supervisor as to why the training had to be performed?

11 A. My supervisor?

12 Q. Yes.

13 A. Aleksei?

14 Q. Yes.

15 A. He's the one who instructed me to go and conduct the  
16 fall protection training.

17 Q. But he did not tell you if that training was being  
18 required by the general contractor on the site?

19 A. He didn't tell me, he didn't tell me.

20 Q. Okay. And let me refer you back to what was marked as  
21 General Counsel's Exhibit 7. I believe it's the document  
22 that you testified you used in that -- oh, is it Respondent?

23 MS. LEONARD: Yeah.

24 Q. BY MS. WALKER: I'm sorry, it's Respondent. It's in  
25 that binder in front of you. It's Respondent's Exhibit 7, on

1 page 9.

2 A. Okay.

3 Q. Is it your testimony that this is documentation that you  
4 used to provide the training at the Westshore Yacht Club on  
5 February 9th?

6 A. That's correct.

7 Q. And looking at page 9, did you -- did you create this  
8 document?

9 A. No.

10 Q. Okay, who prepared this document --

11 A. My supervisor, Aleksei Feliz.

12 Q. And what time did the shift start at the Westshore Yacht  
13 Club on February 9th?

14 A. Don't remember.

15 Q. You don't remember what time the entire shift started?

16 A. It could be at 7:00 before they start working to 8:15 in  
17 the morning.

18 Q. Okay, but you're not aware of exactly what time?

19 A. No. Like I say, it was morning time.

20 Q. It was morning time when you went and did the safety  
21 training; is that correct?

22 A. Yes.

23 Q. Had the men started work before you arrived?

24 A. No, no, nobody had started working. I remember I  
25 arrived and -- everybody. I don't know if it was past 7:00

1 or it was exactly 7:00, but I know nobody had to start  
2 working before I conduct my fall protection training.

3 Q. So none of the shift started before the training  
4 started, correct?

5 A. That's correct.

6 Q. And can you tell me, and I apologize if you've already  
7 testified to this, but where did you perform your training?

8 A. At the parking lot of the project.

9 Q. And how long did the training take?

10 A. About an hour and 15 minutes.

11 Q. And did employees just stand and watch for that hour and  
12 listen, or was there anywhere for them to sit down? Did they  
13 sit down?

14 A. Some of them, they decided like kind of standing there  
15 on their tailgates.

16 Q. Okay.

17 A. Or because they're parking, some of them decided sit  
18 down on the tailgate because obviously it's -- an hour and 15  
19 minutes. So I offer them, anybody can relax, relax, sit  
20 down. So some of them, they just decided to stand up.

21 Q. Did AMS have a trailer or anything on that jobsite that  
22 could've been used for training?

23 A. Not at that moment because we were just starting the  
24 job, so --

25 Q. So the job had not started at all, or had it started

1 just shortly before that?

2 A. We had several employees, they started the job. Like  
3 the concrete guys. And at that moment, we didn't have the  
4 trailer. It's just called a common where we put all our  
5 materials.

6 Q. Now, I'd like to refer your attention to the next page  
7 on that same document, Respondent's Exhibit 7. You gave some  
8 testimony regarding pages 10 and -- I'm sorry, 10 and 13.  
9 You were asked by counsel for AMS who you saw sign this  
10 document. Did you recall who you saw sign this document, or  
11 were you reading off the document?

12 A. I don't understand your question.

13 Q. Okay. You were asked by Respondent's counsel who you  
14 saw sign what's been marked as Respondent's Exhibit 7, page  
15 13, and you answered him, and I was questioning you as to  
16 whether you recalled seeing them sign the document or whether  
17 you were reading off of the document.

18 A. No, I seen every single person signing it.

19 Q. Okay.

20 A. That I don't remember their faces now is something else,  
21 but I remember every single person because, before -- when I  
22 conduct my training, I ask everybody, every single  
23 individual, did everybody understand what we just went  
24 through? Fall protection, scaffold, heavy equipment, the  
25 whole nine yards. Yes, we do. Anybody have any questions

1 about it? Any complaints, anything that we need to discuss  
2 right now? Everybody got it? Yes, we do. Okay. So  
3 everybody please sign this piece of paper that is going to  
4 say that you guys attend to this training, and please put the  
5 date.

6 Q. So you recall seeing all of these individual employees  
7 sign this document?

8 A. Yes, the booklet was right there, and everybody signed  
9 it.

10 Q. Thank you.

11 A. Yes, ma'am.

12 Q. When you were performing the training at the Westshore  
13 Yacht Club on February 9th, did you have a mockup of a  
14 scaffold there to use to show how to properly hook up the  
15 various equipment that you demonstrated to us earlier?

16 A. There was a scaffold, there was a scaffold provided,  
17 already built, to show them how to put your strap and how to  
18 tie off.

19 Q. And where was the scaffold?

20 A. On the first floor.

21 Q. On the first floor of the yacht club?

22 A. Yes.

23 Q. Did you move from the parking lot to the scaffold to  
24 continue the training over there?

25 A. No.

1 Q. Okay. So was the scaffold used at all in the training?

2 A. The scaffold?

3 Q. Yes.

4 A. No, I used the scaffold to show everybody how the  
5 scaffold looked like and how they had to tie off.

6 Q. But you didn't actually hook any of the equipment to the  
7 scaffold at that training; is that correct?

8 A. On the training?

9 Q. Yes.

10 A. No.

11 Q. And looking back to page 9 of Respondent's Exhibit 7, in  
12 front of you, going back to page 9.

13 A. Okay.

14 Q. Do any of the illustrations on page 9 show how a mason  
15 or an employee should be tied off to a scaffold?

16 A. No.

17 Q. And you were not present at the University of Tampa job  
18 on May 16th, 2016, to observe Mr. Stevenson or Mr. Acevedo --

19 A. No.

20 Q. Let me finish.

21 A. Um-hum.

22 Q. Okay, tie off to the scaffold, were you?

23 A. No.

24 Q. And you provided some demonstration of how to use some  
25 of the fall protection training equipment on both direct

1 questioning, as well as cross-examination from General  
2 Counsel. Any of those demonstrations that you showed us  
3 today, are any of those shown on page 9 of Respondent's  
4 Exhibit 7? It's page 9. It's the diagram. Yes. Are any of  
5 those demonstrations that you showed us today at the hearing  
6 identified on page 9 of Respondent's Exhibit 7?

7 A. I don't understand your question.

8 Q. I'll ask it again. So what we see on Respondent's  
9 Exhibit 9 [sic] is what kind of demonstration of how to  
10 properly utilize the fall protection equipment.

11 A. Okay. Page 9 is a demonstration of the proper way to  
12 use a harness, and it also demonstrates why we don't use  
13 lanyards, 6-foot lanyards, like the one I just showed.

14 Q. But this exhibit, Respondent's Exhibit 9 -- Respondent's  
15 Exhibit 7 on page 9 does not demonstrate how to properly tie  
16 off to a scaffold; is that correct?

17 A. Not this page.

18 Q. I believe you were also asked earlier about your  
19 familiarity with a technique called cinnamon bun. Do you  
20 recall that testimony? When did you first hear that  
21 terminology?

22 A. Kind of when I started with Advanced Masonry Systems.

23 Q. So you heard that 16 years ago?

24 A. Yeah, because they showed me how to tie off. They  
25 trained me.

1 Q. Who showed you how to tie off in that way?

2 A. I don't remember his name. It's a while ago.

3 Q. Who hired you at AMS?

4 A. Who hired me?

5 Q. Yes.

6 A. I went to apply to AMS through my stepfather-in-law. He  
7 had already been working with the Company.

8 Q. And what is his name?

9 A. Freddy Calderon.

10 Q. Do you bring all of the equipment that you've brought to  
11 the hearing today, the safety harness on the dummy and the  
12 straps and the anchors, to all of your fall protection  
13 training on AMS jobs?

14 A. Yes.

15 Q. How often would you do those trainings?

16 A. Every time we have a new employee that needs to be  
17 trained on fall protection and the scaffold anchor points,  
18 heavy equipment.

19 Q. Do the employees ever start work before they receive  
20 fall protection training?

21 A. Some employees, what they do, they start working, but  
22 they don't put them in harm way as high. They keep them like  
23 on the foundation. That doesn't need fall protection  
24 required.

25 Q. And how is that communicated to the person who assigns

1 them work?

2 A. So after that, a supervisor got on the phone and called  
3 my safety -- my supervisor, I'm sorry, and then I get  
4 instructed to go and conduct fall protection and all the nine  
5 yards, whatever the AHA book covers on a particular project.

6 Q. Is Respondent's Exhibit 9 -- I'm sorry, Respondent's  
7 Exhibit 7 -- an example of the training and the packet that  
8 would be used to train for fall protection on all jobsites,  
9 or was it just specifically for the Westshore Yacht Club?

10 A. All jobsites.

11 Q. And the reason it would have the Westshore Yacht Club on  
12 the cover page of Respondent's Exhibit 7 is because it was  
13 for the Westshore Yacht Club?

14 A. For that project.

15 Q. Would there be other packets like Respondent's Exhibit 7  
16 for all other jobsites at AMS?

17 A. We do, but it's not necessary to do it. If they get  
18 trained once on fall protection, they don't have to get  
19 trained again on the other projects.

20 Q. So there are not new employees that may be working at a  
21 jobsite that would require the fall protection training?

22 A. Yes, yes. If new employees arrive to a different job,  
23 they will need to be trained on fall protection as well.

24 Q. Is there anything or any information in Respondent's  
25 Exhibit 7 that is specific to the Westshore Yacht Club job?

1 A. On this page?

2 Q. In the entire exhibit, Respondent's Exhibit 7. Is there  
3 any information in this document that is specific for the  
4 Westshore Yacht Club project?

5 A. Yes, right in front --

6 Q. Other than the cover page. Well, okay. So the cover  
7 page is specific. Other than the cover page.

8 A. Yes. It also says it right here on the second page,  
9 project location: Westshore.

10 Q. Okay. And looking at pages 2 through 9 of Respondent's  
11 Exhibit 7, is there any information on those pages of this  
12 exhibit that are specific for the Westshore Yacht Club  
13 project?

14 A. No. The first page and the second page represent the  
15 rest of the pages.

16 Q. Okay. When you go and perform fall protection training  
17 on jobsites of AMS, do you bring a packet and a signature  
18 page, like Respondent's Exhibit 7, to those sites?

19 A. Yes.

20 Q. Has there ever been a jobsite where fall protection  
21 training has been performed, that that written documentation,  
22 like Respondent's Exhibit 7 or the other equipment that you  
23 brought today, was not used?

24 A. I don't understand your --

25 Q. It's compound. I'll break it down for you.

1 A. Okay.

2 Q. Are there any other jobsites at AMS where fall  
3 protection training would have occurred where there would not  
4 have been a document used like Respondent's Exhibit 7?

5 A. No.

6 Q. Are there any jobsites where AMS performs fall  
7 protection training in which the equipment that you brought  
8 here today would not have been used?

9 A. No.

10 Q. Did you perform fall protection training at the Bethune-  
11 Cookman worksite?

12 A. That's correct.

13 Q. When was that training performed?

14 A. On the field.

15 Q. It was performed on the field on what day?

16 A. Don't remember.

17 Q. Would it have been sometime near the beginning of the  
18 job?

19 A. Yes. I was assigned on that job by site safety  
20 coordinator, so as new employees arrive to a job, I was going  
21 through every -- they go through the general contractor  
22 orientation first, which covers fall protection, the whole  
23 nine yards. And then right after that I conduct my AMS fall  
24 protection training.

25 Q. How often would you have to perform that training on

1 that job as new employees came?

2 A. Almost every day.

3 Q. You would perform that training that lasted an hour and  
4 a half every day?

5 A. Almost every day because we have, I'm going to say,  
6 close to a hundred employees.

7 Q. It was a big job?

8 A. It was a big project, so it required me to train like  
9 almost every day.

10 Q. And that could've been why you were assigned as the  
11 coordinator --

12 A. Correct.

13 Q. -- on site, correct?

14 A. Correct.

15 Q. Do employees have to sign for the safety equipment  
16 provided by AMS?

17 A. Yes, they have to sign a piece of paper that proves that  
18 we provided fall protection equipment, but not necessary they  
19 have to sign. They don't have to sign. We offer every one  
20 employee fall protection equipment.

21 Q. Okay.

22 A. They don't really have to sign.

23 Q. Well, but if they receive it, they sign for it; is that  
24 correct?

25 A. When they receive it, that means that they take it from

1 us. But there are some employees that we offer the  
2 equipment, and they refuse to the equipment because they have  
3 their own. So they rather to use their own.

4 Q. Okay.

5 A. So I offer the equipment, and I explain to them that  
6 we're supposed to provide the equipment, and they refuse.  
7 They say no, I only need like safety straps, anchors, which  
8 they cost more money for them, it's more expensive to get  
9 them themselves, because many employees, what happens when  
10 they -- we provide fall protection equipment, they left it in  
11 the house, their dog tore it apart. So everything costs a  
12 lot of money. So somehow they have to come out with the fall  
13 protection equipment because --

14 Q. Does each employee receive the safety harness?

15 A. Yes.

16 Q. I'm sorry, let me ask this. Is each employee offered a  
17 safety harness?

18 A. You mean that each employee get offered by us?

19 Q. Yes.

20 A. That's correct.

21 Q. Okay. And what other equipment, fall protection  
22 equipment, is offered to the individual employee?

23 A. A harness, a retractable, a safety strap, and the anchor  
24 point, if it's required, depending on the operation they're  
25 doing.

1 Q. Okay. So that equipment that you just described is  
2 handed out on a jobsite-by-jobsite basis; is that correct?

3 A. That's correct.

4 Q. And at the end of the job, is the employee expected to  
5 return that equipment that was used?

6 A. No, they keep it; they keep their equipment.

7 Q. Do they keep it only if they're moving to another job  
8 for AMS?

9 A. As long as they're employed by us, they keep it at all  
10 times.

11 Q. And if they go to another jobsite which requires  
12 different equipment to be used --

13 A. No, ma'am.

14 Q. -- it could be supplemented?

15 A. No, ma'am, the same equipment. No. If they go to a  
16 different job and they're working high, they're required to  
17 use the anchor point and then we offer -- we provide them the  
18 anchor points.

19 Q. And do all the masons that are required to use the drill  
20 and the drill bit that you showed us, is that kept in a  
21 common location for them to use?

22 A. Those drills, they're in all the place.

23 Q. When you were performing as the onsite safety  
24 coordinator at Bethune-Cookman college, who was performing  
25 the safety training and the fall protection training at the

1 other jobsites of AMS?

2 A. Different safety, different safety.

3 Q. So the safety coordinators that are assigned at each  
4 jobsite can perform the same training that you perform?

5 A. Which is my supervisor, Aleksei. He goes like from  
6 jobsite to jobsite to make sure everybody's trained on  
7 everything, fall protection especially, and --

8 Q. Can the superintendents that are assigned as regional or  
9 as onsite coordinators, can they also perform that fall  
10 protection training?

11 A. You mean our supervisors?

12 Q. Yes, your supervisors.

13 A. The supervisor, also a competent person, the ones that  
14 have received training on fall protection and 30-hour OSHA  
15 class -- hour, sorry. They became the competent person to be  
16 able to train new employees on fall protection as well.

17 Q. And are those employees that are competent to do the  
18 fall protection training, other than yourself and Mr. Feliz,  
19 the ones you identified as those who hold the OSHA 30  
20 certifications?

21 A. No, we still have more individuals that work in the  
22 safety department as well.

23 Q. Okay, who are they?

24 A. Mr. David Rodriguez is one of them. Mr. Rafael Cabrera  
25 and Mrs. Jenetta (ph.).

1 Q. Let me refer your attention to what was marked as  
2 Respondent's Exhibit 15. So it's the binder in front of you.  
3 Behind Tab 15.

4 A. Number 15?

5 Q. Yes.

6 A. R-15?

7 Q. Yes, R-15.

8 A. Okay.

9 Q. I believe you testified on direct examination that you  
10 told Mr. Acevedo that he had to sign this document; is that  
11 correct?

12 A. I believe I did. When I explain to him and he  
13 understands the violation, I asked him. His signature is  
14 required here on the bottom to go over the investigation  
15 report.

16 Q. If he had refused to sign, would you have sent him home  
17 anyway?

18 MR. THOMAS: Objection to the form, and it calls for  
19 speculation.

20 MS. WALKER: Okay.

21 JUDGE ROSAS: I'll allow that, I'll allow that. There's  
22 enough foundation for that. Go ahead. You can answer, if  
23 you know.

24 THE WITNESS: I'm sorry.

25 JUDGE ROSAS: If he refused to sign.

1 THE WITNESS: If he refused to sign, I cannot force him  
2 to sign a paper that he don't want to sign. I explain to him  
3 so he can understand the violation, but I can't force anybody  
4 to sign a piece of paper if they don't want to sign it. But  
5 I asked him, will you please sign my report? He had no  
6 problem to sign it.

7 Q. BY MS. WALKER: Would he still have been sent home even  
8 if he did not sign this?

9 A. No. No, ma'am, that's not my call.

10 Q. Okay. Would you had to have called Mr. Feliz and  
11 explain that to him?

12 A. I hand the report to my supervisor.

13 Q. Have you ever had an employee who's had a warning notice  
14 written up and refused to sign?

15 A. Don't remember.

16 Q. You gave some testimony earlier about a disciplinary  
17 action of an AMS employee by a general contractor. Do you  
18 recall that?

19 A. Yes.

20 Q. And nothing prevents AMS from issuing stricter  
21 discipline to an employee of AMS than what the general  
22 contractor suggests, does it?

23 MR. THOMAS: Objection to that claim.

24 MS. WALKER: Your Honor, he --

25 JUDGE ROSAS: Do you understand the question?

1 THE WITNESS: No.

2 JUDGE ROSAS: Rephrase.

3 MS. WALKER: Yes, sir.

4 Q. BY MS. WALKER: Let me refer you to what's been marked  
5 as General Counsel's Exhibit 8(d), and it looks like this.

6 Do you recall testifying and answering questions about this  
7 document, General Counsel's Exhibit 8(d)?

8 A. I'm in Mr. Brandon Carollo's report.

9 Q. That's correct.

10 A. Okay.

11 Q. And as I understood your testimony, and you can correct  
12 me if I'm wrong, you explained that this was information that  
13 you completed per what someone who worked for the general  
14 contractor, Hensel Phelps, told you to write; is that  
15 correct?

16 A. That's correct, that's correct.

17 Q. Okay. And I believe you also testified that this person  
18 was not disciplined -- was not terminated because no one at  
19 AMS had witnessed what the general contractor reported to  
20 you, correct?

21 A. That's correct.

22 Q. Nothing prevents AMS from giving a harsher, stricter  
23 discipline to this employee for this violation, does it?

24 A. Can you explain to me your question?

25 Q. Sure, sure. AMS has a right to discipline its employees

1 to whatever degree it wants to discipline them for a  
2 violation of their handbook; is that correct?

3 MR. THOMAS: I want to object to the question. There's  
4 no foundation that Mr. Ramirez had responsibility for  
5 discipline in that.

6 MS. WALKER: He's testified multiple times about  
7 disciplinary.

8 JUDGE ROSAS: I'm going to allow you to go that line,  
9 but you're going to have to provide some real basic  
10 foundation here, starting way back with custom and practice.

11 MS. WALKER: Sure.

12 JUDGE ROSAS: And the regs, policies, and procedures,  
13 whatever's active.

14 Q. BY MS. WALKER: Okay, Mr. Ramirez, you testified earlier  
15 that AMS has a zero tolerance policy for violations of fall  
16 protection training --

17 A. That's correct.

18 Q. -- is that correct?

19 A. That's correct.

20 Q. And that is in AMS's handbook, correct?

21 A. That's correct.

22 Q. And when an AMS employee is on a jobsite, they are  
23 answerable to AMS; is that correct?

24 A. That's correct.

25 Q. And AMS regularly disciplines its employees for

1 violations of the handbook and its policies and procedures;  
2 is that correct?

3 A. That's correct.

4 Q. And nothing would prevent AMS from disciplining  
5 Mr. Carollo more stricter than a suspension or a warning if  
6 it wanted to; is that correct?

7 MR. THOMAS: I'm going to object to the form of the  
8 question again.

9 JUDGE ROSAS: I'm going to ask you to continue to  
10 rephrase this. There's sort of two negatives in there,  
11 specifically starting off with the term nothing or never. I  
12 mean, I understand where you're trying to go, and you can  
13 keep working around the edges here, but that's a little too  
14 vague for this witness.

15 MS. WALKER: I'll ask him here directly.

16 JUDGE ROSAS: Given his field position and the lack of  
17 foundation that's been established vis-à-vis the type of  
18 process or procedure that you're trying to say could have  
19 been implemented or is it actually implemented. So you can  
20 continue to try to probe, but I'm going to insist on it being  
21 rephrased.

22 Q. BY MS. WALKER: Mr. Ramirez, are you involved at all in  
23 documenting discipline of AMS employees?

24 A. That's correct.

25 Q. And what is your involvement?

1 A. My involvement is to report every incident that happens.  
2 Like, for example, if I observe something, to report  
3 immediately to my supervisor, document it and go from there,  
4 whatever they instruct me.

5 Q. Whatever AMS instructs you. And if AMS instructed you  
6 to terminate Mr. Carollo for this violation, you would have  
7 done that, correct?

8 A. If they instructed me to, but if I don't see it --

9 Q. That's a yes or no question. Move to strike any --

10 MR. THOMAS: I believe the question was vaguely phrased,  
11 and that's why the witness is answering it.

12 JUDGE ROSAS: Okay. All right, the question is yes or  
13 no.

14 THE WITNESS: No.

15 JUDGE ROSAS: If they had instructed you to terminate  
16 the employee.

17 Q. BY MS. WALKER: If AMS had instructed you to terminate  
18 Mr. Carollo, would you have terminated him? Yes or no?

19 JUDGE ROSAS: You can say, oh, I can't answer that.

20 THE WITNESS: I can't answer that.

21 Q. BY MS. WALKER: Why can't you answer that?

22 A. Because I'm not going to answer something that is not  
23 our report. I'm not going to terminate anybody that I didn't  
24 see and is not our report.

25 Q. So you have the authority to terminate someone?

1 A. If I get instructed to terminate someone.

2 Q. Okay. If you're instructed to terminate someone, you  
3 will terminate them, correct?

4 A. Yes, yes.

5 Q. And if someone at AMS instructed you to terminate  
6 Mr. Carollo, you would have done that, correct?

7 MR. THOMAS: Object to the form of the question again.

8 JUDGE ROSAS: Overruled. If it had been AMS, someone  
9 from AMS.

10 THE WITNESS: If someone from AMS observed, yes, and  
11 they instructed me to terminate a person, yes, I will.

12 Q. BY MS. WALKER: If AMS instructed you to terminate a  
13 person, you would do that, correct?

14 A. Yes, if it was observed by our department.

15 Q. If AMS instructed you to terminate an employee that they  
16 did not observe to do any -- not observed a violation, but  
17 they instructed you to terminate them anyway, would you have  
18 terminated them?

19 MR. THOMAS: I'm going to object to the question again.

20 JUDGE ROSAS: Sustained. Rephrase.

21 Q. BY MS. WALKER: If Mr. Feliz instructed you to terminate  
22 Mr. Carollo, would you have done that?

23 A. I would've asked Mr. Aleksei to explain to me why I'm  
24 going to terminate a person. For example, he needs --

25 Q. I haven't asked you a question. In what situations

1 would you question a direct order of your supervisor,  
2 Mr. Feliz?

3 A. If he instructed me to terminate somebody that is not  
4 observed by him or any of our supervisors and is not even our  
5 report.

6 Q. Why would you question him?

7 A. I'd question, can I know why I'm going to terminate this  
8 person, that I'm not even seeing him in a fall protection  
9 violation, or you didn't even see him, or he's not even used  
10 that piece of paper from our company to terminate this  
11 person?

12 Q. How often did you challenge Mr. Feliz on things he has  
13 asked you to do?

14 MR. THOMAS: I'm going to object to this line of  
15 questioning. Again, it's not based on a single --

16 JUDGE ROSAS: Sustained.

17 MR. THOMAS: -- fact.

18 JUDGE ROSAS: Sustained.

19 Q. BY MS. WALKER: Did the general contractor tell AMS that  
20 it could not terminate Mr. Carollo?

21 A. On this particular report, I don't know.

22 Q. You don't know if -- did anyone from the general  
23 contractor tell you AMS cannot terminate Mr. Carollo?

24 A. I don't remember.

25 Q. How many employees does AMS currently have?

1 A. Right now?

2 Q. Yes.

3 A. I can't answer that question because I'm not -- I can't  
4 give you exactly a number.

5 Q. Is it too many for you to recall?

6 A. I'm going to say, I'm going to say 180, 200.

7 Q. At any given time do you know who all of the employees  
8 of AMS are?

9 A. At this moment?

10 Q. At any given time, would you know who all the employees  
11 of AMS were?

12 A. I'd have to see them.

13 Q. You would have to see them to know them?

14 A. Yes.

15 Q. But sitting here today, you could not tell us whether a  
16 particular person was employed by AMS or not; is that  
17 correct?

18 A. Yes.

19 Q. In discussing the disciplinary action of a Mr. Salgado,  
20 do you recall that testimony?

21 A. Salgado?

22 Q. Yes.

23 A. The one with the face shield issue?

24 Q. I believe so. I believe you said that he was terminated  
25 by the main supervisor, Miguel.

1 A. Yes.

2 Q. Who is Miguel?

3 A. Miguel is the one in charge of the concrete division.

4 Q. In charge of the concrete division at AMS?

5 A. Yes.

6 Q. Was Mr. Salgado a mason?

7 A. I believe he was a -- I don't remember if he was a  
8 carpenter or rod buster.

9 MS. WALKER: Your Honor, I think I'm through, but I'd  
10 like a minute just to review my notes --

11 JUDGE ROSAS: Sure.

12 MS. WALKER: -- to make sure.

13 **(Pause.)**

14 MS. WALKER: That's all I have, Your Honor, for this  
15 witness.

16 JUDGE ROSAS: Redirect?

17 **REDIRECT EXAMINATION**

18 Q. BY MR. THOMAS: Mr. Ramirez, I only have one follow-up  
19 question. If you'll go back to the binder and look at  
20 Respondent's Exhibit 7 in evidence, which you've testified  
21 about. If you'll turn to the signature pages. When you were  
22 being questioned by Ms. Leonard about all the individuals who  
23 signed on February the 9th, 2016, does that refresh your  
24 recollection about how many people attended your training at  
25 the Westshore Yacht Club that day?

1 A. Well, it happened a while ago. It could be, like I  
2 said, five, six, or more. I don't remember. All I remember  
3 about telling everybody that it goes like an hour and 15  
4 minutes training. And right after that, you know, everybody  
5 signed. But I can't remember like how many guys, like 15,  
6 30. All I remember, I conduct an hour and 15 minutes fall  
7 protection training that morning.

8 Q. And did everyone who attended sign the signature pages  
9 that are part of Exhibit 7?

10 A. That's correct.

11 MR. THOMAS: Nothing further.

12 JUDGE ROSAS: Any follow-up?

13 MS. LEONARD: No, Your Honor.

14 MS. WALKER: No, Your Honor.

15 JUDGE ROSAS: Thank you, sir. You're excused. Please  
16 do not discuss your testimony with anyone until you find out  
17 from the lawyers that the case is closed, okay?

18 THE WITNESS: Yeah, Your Honor.

19 **(Witness excused.)**

20 JUDGE ROSAS: We'll take 5.

21 **(Off the record from 3:20 p.m. to 3:29 p.m.)**

22 (Whereupon,

23 **BRENT McNETT**

24 was called as a witness by and on behalf of the Respondent  
25 and, after having been duly sworn, was examined and testified

1 as follows:)

2 JUDGE ROSAS: Spell your name.

3 THE WITNESS: My name is Brent McNett, B-r-e-n-t  
4 M-c-N-e-t-t.

5 JUDGE ROSAS: And provide us with an address, sir.

6 THE WITNESS: 29606 Saddlebag Trail, Myakka City, 34251.

7 **DIRECT EXAMINATION**

8 Q. BY MR. THOMAS: Good afternoon, Mr. McNett. Mr. McNett,  
9 do you have a nickname?

10 A. Yes, it's Turbo.

11 Q. And why are you nicknamed Turbo?

12 A. When I first started with the Company, I worked with a  
13 guy named Chief, and there was a bunch of us on the job that  
14 had nicknames, and I was driving the forklift, and I was  
15 usually going a little too quick on it.

16 Q. Are you currently employed?

17 A. Yes, sir.

18 Q. Where are you currently employed?

19 A. At Advanced Masonry Systems.

20 Q. How long have you been employed by Advanced Masonry?

21 A. Since December of 1990.

22 Q. Would you run us through your career with AMS and touch  
23 on the various positions that you've held?

24 A. Yes. When I started with AMS in 1990, I was a labor  
25 tender and a forklift operator. And in '94 they told me if I

1 wanted to run work, I had to take the apprenticeship class  
2 with the State of Florida, and I took that. In 3 years  
3 graduated that, and in '97 I started -- in '97, '98, I was  
4 running jobs for AMS as a foreman and been doing that ever  
5 since.

6 Q. As a foreman, do you supervise employees on jobsites?

7 A. Yes, sir.

8 Q. Have you ever had union members on your work crews at  
9 AMS before?

10 A. Yes, sir.

11 Q. For how long?

12 A. All the way back in the early '90s.

13 Q. What is your supervisory style?

14 A. I like to be laid back, nice and calm. I joke around  
15 with the guys. But when I get going with work and I got to  
16 tell people what to do two to three times, I might get a  
17 little louder, correct them, you know, tell them what they're  
18 doing wrong, and if they're not listening to the way I'm  
19 telling them, I tell them it's my job, it's my butt on the  
20 line, and I want it done my way. And if that don't work, it  
21 might get to be a few profanities and yell a little bit.  
22 After about the fourth or fifth time, it gets a little -- but  
23 I like to be nice and calm where it's nice and easy, but  
24 there have been days that that hasn't happened.

25 Q. Does the presence of union members on your crew impact

1 your supervisory style at all?

2 A. No, sir.

3 Q. Do you treat union members different from non-union  
4 members?

5 A. No, sir.

6 Q. Are you a member of the Bricklayers Union?

7 A. As of right now, no. I quit paying my dues in -- the  
8 end of December they ran out.

9 Q. Was there a period of time when you were a member of the  
10 Bricklayers Union?

11 A. Yes, sir.

12 Q. What was that period of time?

13 A. From 2011 and a couple years before that, all the way up  
14 until December of 2016.

15 Q. During the time when you were a member of the  
16 Bricklayers Union, did you pay dues?

17 A. Yes, sir.

18 Q. As a union member, were you aware that there were other  
19 members of the Bricklayers Union who worked at AMS?

20 A. Yes, sir.

21 Q. Were you familiar with the benefits that the Union  
22 offered during that period of time?

23 A. Yes, sir.

24 Q. Did you participate in the health plan?

25 A. Yes, sir.

1 Q. Did you participate in the pension plan?

2 A. Yes, sir.

3 Q. Based on your experience with those plans, do you have  
4 an opinion about the quality of the union benefits or about  
5 how they were administered?

6 A. They were fine with me.

7 Q. Have you ever described the Union's health insurance as  
8 being no good?

9 A. No, sir.

10 Q. Have you ever described the Union, in any context, as  
11 stealing money from members?

12 A. Stealing from members? No, sir.

13 Q. Have you ever stated, in any context, that the Union  
14 tricked people into signing up?

15 MS. WALKER: Objection, he's leading the witness.

16 JUDGE ROSAS: I don't see how else he could get to it.

17 MS. WALKER: Have you ever talked poorly about the  
18 Union?

19 JUDGE ROSAS: What's that?

20 MS. WALKER: Have you ever talked poorly about the  
21 Union?

22 JUDGE ROSAS: Too vague. It's all right. Overruled.

23 THE WITNESS: What was the question again?

24 Q. BY MR. THOMAS: Have you ever, in any capacity, stated  
25 that the Union tricked people into signing up?

1 A. I said I heard they did, but I didn't see it. I heard  
2 it from when they did applications on a job, like two  
3 employees, they told me that.

4 Q. All right. And when did you make that statement?

5 A. That was made -- I can't remember when it was made, but  
6 it was with the two union guys, and one of them is working  
7 with me now, and I can't remember what date I made that  
8 statement.

9 Q. When you say the two union guys, can you identify the  
10 people you were talking to?

11 A. Yeah, it was the guys that were having problems. As a  
12 matter of fact, it was Jeremy, Jeremy Clark. And that was  
13 the other guy. And the other guy is working with me because  
14 they were charged union dues and tried to get out of it.

15 Q. Mr. McNett, have you ever had the opportunity to meet  
16 any of the leadership of the Bricklayers Union Local 8?

17 A. Yes.

18 Q. All right, tell us about that.

19 A. I was in Daytona working, and there was a party going  
20 on -- not a party, there was pizza given out at a hotel, and  
21 they were giving out shirts, and I walked -- I was called to  
22 come to the meeting because I heard that there were some bad  
23 things said about AMS, and I went to a meeting at the Best  
24 Western in -- no, in Daytona. And there was two  
25 representatives, Mike Bontempo and another guy that I

1 remember the name but I don't remember the face. His name  
2 was Jay, who I guess was the president and came from Alabama,  
3 but I don't remember the face that much.

4 Q. Did you speak to the individual named Jay?

5 A. Yes, after the meeting, I did.

6 Q. Did you overhear Jay make any kind of statement about  
7 the union strategy with respect to non-union employees?

8 MS. WALKER: Objection to relevancy.

9 MR. THOMAS: Well, Your Honor, there's an issue about  
10 the motivation of these charges and who's got the animus, and  
11 we'd submit to Your Honor that the animus is not of the  
12 Employer; it's the Union's animus.

13 MS. WALKER: Again, we had the same argument yesterday.  
14 I don't understand why union animus is an issue in the case  
15 when the Employer does not have unfair labor practice charges  
16 filed against the Union and has no objections filed to the  
17 election. The Union's animus is irrelevant.

18 JUDGE ROSAS: Unless you can give me a proffer that even  
19 remotely bears on such information tending to prove or  
20 disprove actions, alleged actions on the part of the  
21 Respondent, I have to sustain the objection.

22 MR. THOMAS: Sure. Well, Your Honor, I can tie it up,  
23 but I don't want him to deal with prior testimony, but there  
24 have been allegations about some things that Mr. McNett  
25 allegedly said.

1 JUDGE ROSAS: Okay.

2 MR. THOMAS: And certainly his state of mind, his state  
3 of mind when he said or did not say something is going to be  
4 relevant.

5 JUDGE ROSAS: Well, you know what? If it turns out to  
6 be the case, I'll let you backtrack if there is this genesis  
7 or source that is a predicate for something that is said at  
8 the relevant times herein.

9 MR. THOMAS: Sure.

10 JUDGE ROSAS: So I'm going to sustain that objection.  
11 Let's move on. So what we have is testimony that the witness  
12 was at -- went to a meeting to represent the Company's  
13 interests and respond to allegations against the Company,  
14 okay, and let's take it from there.

15 Q. BY MR. THOMAS: All right. And Mr. McNett, you met  
16 Mr. -- his first name was Jay, at that meeting?

17 A. Um-hum.

18 Q. All right. And based on the Court's ruling, I'm going  
19 to move to another subject. We may revisit that later.

20 A. Okay.

21 Q. Mr. McNett, as a foreman for AMS, did you see a notice  
22 of election posted with respect to an election where  
23 employees would choose whether they wanted the Bricklayers  
24 Union to represent them?

25 A. Yes, sir.

1 Q. Where did you see that notice?

2 A. That notice was posted on the Conex at the University of  
3 Tampa doors.

4 Q. Do you remember when you saw it?

5 A. Yeah, I personally put them up.

6 Q. All right. Do you remember when in time that was?

7 A. I don't know the exact dates, but as soon as I got them  
8 from the office, I hung them up on the door and took pictures  
9 and sent them back to the office to show that they were  
10 displayed so everyone could see them.

11 Q. Did you personally receive any mail from the Union with  
12 respect to the election?

13 A. Yes, sir.

14 Q. What is it you received?

15 A. Letters to vote for the Union and not for AMS.

16 Q. As a foreman at a jobsite, what are your  
17 responsibilities?

18 A. I go over blueprints. I lay out. I make sure all the  
19 men are laying block or brick, the tenders are there doing  
20 their job, and everything is getting done in an orderly  
21 fashion so the job finishes on time.

22 Q. Does AMS have a safety program?

23 A. Yes, sir.

24 Q. As a foreman, do you have any role in communicating the  
25 policies contained in that program to employees?

1 A. Yes, sir.

2 Q. What is that role?

3 A. The role is, on every Monday, we have a safety meeting,  
4 and we go through a toolbox talk.

5 Q. How long do these toolbox talks last?

6 A. Anywhere from 10, 15, up to 30 minutes. It depends on  
7 how many questions are asked.

8 Q. And do you know how the topic is chosen for the talk?

9 A. They send a piece of paper out from the office, and  
10 that's what we go by.

11 Q. When you say "they," is there any person in the  
12 department in particular?

13 A. It comes from the safety department.

14 Q. Who attends the toolbox talk?

15 A. Every single employee. That's how I do my time sheets  
16 for the week. I have them sign them, and that's when I write  
17 my time sheet out. I take every name off that, and I tell  
18 them, on Monday, if it's not signed -- and that's how I do my  
19 time sheet. And I go back. If they say they missed Monday  
20 and their name ain't on there, that's the sign-in sheet, and  
21 they don't get paid for that day. It's like a time card.

22 Q. When in the workday is the toolbox talk conducted?

23 A. Seven o'clock in the morning.

24 Q. Do employees ever start working before you've done your  
25 toolbox talk?

1 A. No, sir.

2 Q. Can employees ask you questions about the safety topic  
3 of your discussion?

4 A. Yes, sir.

5 Q. Can employees ask you questions about other things  
6 during the toolbox talk?

7 A. Yes, sir.

8 Q. Did there come a time during a toolbox talk where an AMS  
9 employee asked you a question about the Company's health  
10 insurance?

11 A. Yes, sir.

12 Q. All right. Do you remember when that happened?

13 A. I don't know the exact date.

14 Q. Do you know if it was before or after the election  
15 notice was posted?

16 A. I think it was after the notices were posted.

17 Q. What was the question you were asked?

18 A. If AMS has insurance.

19 Q. Do you remember who asked you that question?

20 A. No, I don't.

21 Q. Did you answer the question?

22 A. Yes, I did.

23 Q. What did you say?

24 A. I said they do have insurance, but I do not know how it  
25 works because at the time I had union insurance, but I can

1 get you the information.

2 Q. Did you make any other representations to the employees  
3 about the company insurance?

4 A. No, sir.

5 Q. Did there come a time when an employee asked about the  
6 Company's 401(k) plan?

7 A. Yes.

8 Q. All right. Do you recall when that happened?

9 A. The same day.

10 Q. What was the question you were asked?

11 A. They asked if they had a 401(k), and I said yes, they  
12 do. And they said do they match any of the funds? I said  
13 they used to, but they don't no more.

14 Q. Did you ever, at a toolbox talk or any other time, tell  
15 employees that they would have to correct mistakes in their  
16 work for no pay?

17 A. No, sir.

18 Q. Did you ever make any reference at a toolbox talk to  
19 mistakes made on the job by AMS employees?

20 A. Yes, sir.

21 Q. What is it that you said?

22 A. I tell them that AMS gets paid to lay the block/brick  
23 one time. If we have to go back and fix it, they do not get  
24 paid again.

25 Q. Wait a second. Who doesn't get paid again?

1 A. AMS does not get paid again to do it a second time.

2 Q. During the toolbox talk or at any other time, have you  
3 stated anything about what may or may not happen to  
4 employees' wages if employees won the election? Excuse me,  
5 if the Union won the election?

6 A. No.

7 Q. Is AMS's fall protection program ever something that you  
8 talk about at a toolbox talk?

9 A. Yes, sir.

10 Q. What is your understanding of AMS's fall protection  
11 requirements?

12 A. That at a certain height, 6 foot or higher, we have to  
13 tie off, no exceptions. If there's a fall, if you're not  
14 scaffolded in, safely railed in all the way around and  
15 there's a place where you can fall, you have to tie off.

16 Q. What if there is a wall in front of the employee?

17 A. If it's a freshly laid wall, you still have to tie off.  
18 If it's not a freshly laid wall and it's solid, you have --  
19 no. If it's a freshly laid wall, you have to tie off. And  
20 if there's not and it's a hard wall, you don't have to, up to  
21 42 inches, plus or minus 3 inches.

22 Q. What are the types of protective equipment that AMS  
23 employees are issued so that they can comply with the fall  
24 protection policy?

25 A. We issue them a harness, a retractor and a strap, and a

1 D-ring.

2 Q. What happens if a job requires fall protection and an  
3 employee doesn't have equipment?

4 A. We give it to the employee, and they sign for it, and  
5 they are to return everything back.

6 Q. What are the consequences, if any, for an employee who  
7 AMS sees violating the fall protection requirements?

8 A. They're terminated.

9 Q. Have you ever heard the phrase "zero tolerance" before?

10 A. Yes, sir.

11 Q. And how have you heard that phrase?

12 A. We've used it all the time.

13 Q. In connection with what?

14 A. Fall protection.

15 Q. Are you familiar at all with OSHA policies on fall  
16 protection?

17 A. Yes, sir.

18 Q. How are you familiar with that?

19 A. I've taken a 30-hour class, and I learned it through  
20 that, and we've learned it in the toolbox talks.

21 Q. How does AMS's policy compare with OSHA's policy?

22 A. It's stricter.

23 Q. Mr. McNett, did there come a time when AMS masons were  
24 doing work at a job at the University of Tampa?

25 A. Yes, sir.

1 Q. All right. What time frame was that job?

2 A. Let's see. It would been probably the beginning of --  
3 either the last week of April, the first week of May.

4 Q. Were you the foreman there?

5 A. Yes, sir.

6 Q. For what period of time?

7 A. From the start of it to the finish. I don't know what  
8 day it ended on.

9 Q. How many employees did you supervise as foreman?

10 A. The most on that was probably eight masons to nine  
11 masons, to eight to nine tenders, down to two masons and two  
12 tenders towards the end.

13 Q. Did any other AMS foreman assist you at any point in  
14 time?

15 A. Yes, sir.

16 Q. Who?

17 A. Mario Morales.

18 Q. And during what period of time did he assist you?

19 A. Probably right after the beginning, so the first of May.  
20 And I don't know how long for, but he was there for May and I  
21 think the beginning of June.

22 Q. Describe for us AMS's work at the University of Tampa.  
23 And first, what was being built?

24 A. It was a fitness center, two-story. We were responsible  
25 for doing the east and west and south wall because there was

1 another company out there that was doing -- or no. Yeah, the  
2 north wall. They were doing the south wall, and it was all  
3 metal studs with like a drywall system on the outside, and it  
4 was painted with a water repellant on it, and we faced it  
5 with a veneer brick. And then on the interior we did two  
6 stairwells and a bunch of columns.

7 Q. About how tall was the structure as a whole?

8 A. About 42 feet.

9 Q. You talked a little about this. Did AMS employees work  
10 on the outside of the building?

11 A. Yes, sir.

12 Q. All right. And if you could go into a little more  
13 detail, please. What kind of work were they doing on the  
14 outside of the structure?

15 A. They were laying brick.

16 Q. Was scaffolding used at any time during this work on the  
17 outside of the structure?

18 A. Yes, sir.

19 Q. Was fall protection needed for the outside work at the  
20 University of Tampa?

21 A. In maybe one or two spots, it was needed at the end of  
22 the scaffold. When there was no more scaffold on the side,  
23 that person would have to tie off because he had a fall  
24 hazard. But everyone on the inside didn't have to tie off  
25 because there was the building in front of them and the

1 scaffold behind them.

2 Q. For the work that was done by AMS employees on the  
3 inside of the building, give me a little more detail. What  
4 kind of work were they doing on the inside?

5 A. They were laying brick, mostly around columns and a  
6 couple stairwells.

7 Q. What were the shape and dimensions of the columns that  
8 you worked on?

9 A. They were about 4-foot wide and 16 inches deep until it  
10 hit the glass.

11 Q. How high was that work above the ground or above a  
12 floor?

13 A. To the top was about 20 -- 18 to 20 feet.

14 Q. Was scaffolding used for AMS's work on the inside of the  
15 building?

16 A. Yes, sir.

17 Q. Was fall protection necessary under AMS's fall  
18 protection policy for the inside work?

19 A. Yes, sir.

20 Q. Why?

21 A. Because there was a single set of scaffold, just two  
22 frames, cross-braces on the bottom and on the top, and once  
23 you got up so high, at 6 foot -- and the scaffold frames are  
24 7-foot wide. So the column is 4 foot, so you center the  
25 scaffold on that. So you had a fall hazard on each side of

1 the scaffold because, from where your walk plank is, the  
2 closest it can get to the window is 16 inches, when OSHA has  
3 a 14-inch. If there's a gap bigger than 14 inches, you have  
4 to tie off. And then the two ends of the scaffold were  
5 exposed to falls also.

6 Q. At the University of Tampa, did AMS employees work on  
7 the inside and the outside of the building at the same time,  
8 or did the sections follow in a sequence?

9 A. We had a few people on the inside while we were doing  
10 the -- towards the end of the outside work. So we had people  
11 on the inside and outside of the building.

12 Q. Mr. McNett, I'd like to take you back to May the 16th,  
13 2016. Do you remember how that workday began?

14 A. Yeah, we started with a safety meeting with the general  
15 contractor in the main part of the building.

16 Q. Who was the general contractor on that job?

17 A. EWI.

18 Q. What happened after the general contractor did a safety  
19 meeting?

20 A. We went and did our safety meeting at our Conex.

21 Q. When you talk about a safety meeting, did you --  
22 consistent with your prior testimony, were you given a topic  
23 to address?

24 A. Yes, I was. From the toolbox talk.

25 Q. Had work already started for the day, before you gave

1 your toolbox talk?

2 A. No, sir.

3 Q. Do you remember specifically what you covered during the  
4 toolbox talk?

5 A. No, I don't.

6 Q. At any time did you comment on fall protection during  
7 the toolbox talk?

8 A. Yes, sir.

9 Q. What is it that you commented on?

10 A. Once I got done with the toolbox talk, because that  
11 wasn't covered on that, and we were moving some of the guys  
12 from the outside to the inside, and I brought up that around  
13 the columns, when we hit 6 foot, we were going to have tie  
14 off, and I told them I'd help them out by saying that the  
15 scaffold is 6-foot-6 tall. We're using 8-foot wheels. So on  
16 the walk plank there at the top, you're going to have to be  
17 tied off.

18 Q. Why did you give employees this reminder?

19 A. Because I knew we were going to be hitting it, and I  
20 didn't want them to have any excuse not to tie off.

21 Q. Did that particular scaffolding have a stable location  
22 to tie off?

23 A. Yes, sir.

24 Q. Would you describe that in some detail, please?

25 A. Yeah, it was set onto a concrete slab, and it had all

1 the cross-braces on it, and we tie off to the main supports  
2 of the scaffold that goes up. There's a 2-inch round plate  
3 that goes around it.

4 Q. Did you say what would happen if anyone didn't tie off  
5 correctly that day?

6 A. Yes.

7 Q. What did you say?

8 A. I said they'd be fired.

9 Q. Were masons named Luis Acevedo and Walter Stevenson  
10 working at UT that day?

11 A. Yes, sir.

12 Q. Did they attend your toolbox talk?

13 A. Yes, sir.

14 Q. Did either of them ask any questions about the need for  
15 fall protection?

16 A. No, sir.

17 Q. Did either of them ask how to tie off?

18 A. No, sir.

19 Q. Did either of them say that OSHA regulations prohibited  
20 them from tying off the scaffolding?

21 A. Later in the day, but not at the meeting.

22 Q. Did the employees at your toolbox talk sign a piece of  
23 paper to indicate that they'd attended the meeting?

24 A. Yes, sir.

25 **(Respondent's Exhibit 14 marked for identification.)**

1 Q. BY MR. THOMAS: If you would take the binder in front of  
2 you, please, and turn to tab number 14. Do you recognize  
3 what that document is?

4 A. Yeah.

5 Q. What is it?

6 A. It's a toolbox talk.

7 Q. All right. On the second page where it says supervisor,  
8 whose name is that?

9 A. Me.

10 MR. THOMAS: We'd like to move Respondent's Exhibit  
11 Number 14 into evidence.

12 MS. LEONARD: Which exhibit?

13 MR. THOMAS: Number 14, Respondent's 14. It's a  
14 two-page exhibit.

15 MS. WALKER: The Petitioner has no objection.

16 MS. LEONARD: No objection from the General Counsel,  
17 Your Honor.

18 JUDGE ROSAS: Respondent's 14 is received.

19 **(Respondent's Exhibit 14 received in evidence.)**

20 Q. BY MR. THOMAS: Mr. McNett, is this the attendance sheet  
21 for the toolbox talk that you delivered at the University of  
22 Tampa jobsite on May the 16th, 2016?

23 A. Yes, sir.

24 Q. Did you see Mr. Acevedo and Mr. Stevenson sign this  
25 document?

1 A. Yes, sir.

2 Q. Now, Mr. McNett, after you delivered the toolbox talk,  
3 what did you do next that day?

4 A. I sat down to do my daily reports, my log book and stuff  
5 I got to turn in to the general contractor, if they want,  
6 first thing in the morning.

7 Q. Did there come a time when you had interaction with  
8 Mr. Mario Morales about something that happened on the  
9 jobsite?

10 A. Yes, sir.

11 Q. All right. What did he discuss with you?

12 A. He called me on the phone when I was doing the paperwork  
13 and said that Luis Acevedo and Walter Stevenson were on the  
14 scaffold and not tied off properly.

15 Q. Did you tell Mr. Morales anything in response?

16 A. Yes, I said tell them it's a good thing I didn't catch  
17 them and make sure they get tied off properly.

18 Q. Do you recall about what time of day you had this  
19 conversation with Mr. Morales?

20 A. It was probably 8:00, 8:10, somewhere in that area.

21 Q. All right. What happened next after you told  
22 Mr. Morales, be glad I didn't catch them?

23 A. He said he was going to have them get tied off, and I  
24 went back to doing my paperwork and turned it in to the  
25 general contractor.

1 Q. Did you have an opportunity later that day to see  
2 Mr. Acevedo and Mr. Stevenson working?

3 A. Yes. As soon as I got done with my paperwork, I went  
4 through the building to check on everybody, and I walked to  
5 the second floor, and I came to the second floor, and their  
6 scaffold that they were on was right there, and that's the  
7 first people I ran into, and they were on the scaffold, and  
8 they were not tied off properly again.

9 Q. What had Mr. Acevedo done wrong with his tie-off?

10 A. He had a 6-foot strap, and it was hooked to the back of  
11 the scaffold, and then he had his retractor hooked to that,  
12 and it was bowed down. So if he would've fell, it would have  
13 had a pendulum effect, and his feet would've hit the ground,  
14 by about knee level would've hit the ground and mostly likely  
15 could have broke an ankle or something. I mean, he wouldn't  
16 have hit his head, but he would've hit the lower part of his  
17 body.

18 Q. We've got some equipment that's behind you. Are you  
19 able to demonstrate what you saw, using that equipment?

20 A. He had a strap just like this, a 6-foot strap that we  
21 use. He had it like this, pulled through tight, hooked to  
22 the back of the scaffold, and his harness and his retractor  
23 was hooked up. I can't recall which way it was hooked up.  
24 He had this to here and this to there, but one of the two  
25 hooked to your center of your back, and you've got about 7½

1 foot. Then you had the center of your back, which would be  
2 5 foot. That puts you about 12½, 13 feet. So his legs are  
3 going when he falls down, and then by the time this pulls  
4 out, you got another 8 inches to a foot. When that grabs,  
5 the pendulum effect is going to come down, and you're going  
6 to hit your legs about right here on the concrete floor.

7 Q. What had Mr. Stevenson done wrong with his tie-off?

8 A. He had his -- this was hooked to his back because he had  
9 taken this, went around the scaffold frame and come back and  
10 was hooked like this, which you're not supposed to do because  
11 this can come around and grab, and if this pin don't grab, it  
12 can pull it back out, and you can roll out or this could  
13 break.

14 Q. Mr. McNett, would you identify those pieces of equipment  
15 that you've got in your hands for the record?

16 A. This is a retractor, and this is the strap.

17 Q. And would you narrate one more time, just describing the  
18 pieces of equipment as you put them together?

19 A. Yeah, he had the strap wrapped around the scaffold  
20 frame, and then he had the retractor, which is hooked to him  
21 like this, and it was hooked to the scaffold, and this was  
22 hooked to the D-ring like this, which is in the center of  
23 your back.

24 Q. The D-ring on the harness?

25 A. On the harness. And this D-ring is hooked to the one on

1 the harness.

2 Q. Okay. Who was it that was like that?

3 A. Acevedo was like this. Okay, Acevedo was hooked with a  
4 strap, and Mr. Stevens [sic] was hooked up to the center of  
5 his back, to the harness and wrapped around the scaffold and  
6 hooked back to the strap, and that would've been Stevens.

7 Q. And when you say -- well, what piece of equipment is  
8 that you've got in your hands right now?

9 A. This is a retractor.

10 Q. Okay. And you testified as to what would've happened if  
11 Mr. Acevedo had fallen. What would've happened if  
12 Mr. Stevenson had fallen?

13 A. I honestly don't know. This could've broke. The  
14 manufacturer does not recommend that, OSHA doesn't recommend  
15 it because of the edges that might break, or if it rolls out  
16 it can come over like that, and if this thing here that  
17 protects that from opening, you know, if it gets wrapped  
18 around it, they call it a roll-out, which it could get caught  
19 on that, and then they can roll out.

20 Q. All right, Mr. McNett, I don't mean to interrupt. I'm  
21 going to have to ask you to repeat that, and just again  
22 identifying the pieces of equipment as you show us how they  
23 work.

24 Q. Okay, the strap gets hooked to here and wrapped back  
25 around to the strap, through the clasp, and then this part

1 here, if the strap goes over that, the weight that you  
2 generate could break that, and it could roll out or it could  
3 break, the strap could break, and you'd fall to the ground.

4 Q. Is there a name for that metal part that could break?

5 A. A clasp, I guess.

6 Q. Did you tell Mr. Acevedo and Mr. Stevenson what they had  
7 done wrong?

8 A. Yes, sir.

9 Q. Did Mr. Acevedo have a response to that?

10 A. Yes, sir.

11 Q. What was that response?

12 A. I showed him what he did and told him, I says you could  
13 hit the ground, and he says that OSHA doesn't require you to  
14 hook off the scaffold.

15 Q. Did you physically show both Mr. Acevedo and  
16 Mr. Stevenson the correct way to tie off?

17 A. Yes, sir.

18 Q. Show us what you did, one final demonstration. Show us  
19 how you showed Mr. Acevedo and Mr. Stevenson how to tie off.

20 A. When I took --

21 Q. Again narrating --

22 A. I went to Acevedo first, and I took the strap off  
23 because he said he'd never been trained at doing this. So I  
24 took it, and I wrapped it around.

25 Q. Okay. When you say he said he'd never been trained, who

1 is he?

2 A. Mr. Acevedo said he'd never been trained on how to do  
3 this, so I told him I would show him how to do it. So what  
4 you do is you pull this, which is the end, the bigger end of  
5 the strap, and you pull it up all the way to the end of the  
6 scaffold frame, and then you just keep wrapping this around  
7 until it gets tight.

8 Q. When you say keep wrapping this around, you keep  
9 wrapping the strap?

10 A. The strap, keep wrapping the strap around your anchor  
11 point until it shortens up. And once it shortens up, you  
12 come around, and then you go through the bigger part with the  
13 smaller part, and then you hook off to that.

14 Q. All right, one more time. The bigger part and the  
15 smaller part --

16 A. The bigger part of the metal clasp that's on the strap,  
17 and you take the smaller part of the metal part of the strap,  
18 and you go through the bigger part.

19 Q. Did Mr. Acevedo say anything about his perception of the  
20 fall risk?

21 A. He told me he was not going to fall. And I think I told  
22 him that I don't think no one plans on falling, and that's  
23 why they call them accidents.

24 Q. Now, Mr. McNett, you testified a few moments ago that  
25 you walked on the site, and you checked on everybody. Do you

1 recall that testimony?

2 A. Um-hum.

3 Q. Did you see anybody else who was tied off improperly?

4 A. Just Mr. Stevens. Everyone else was tied off properly.

5 Q. Mr. Stevenson?

6 A. Stevenson.

7 Q. What did you do after you observed Mr. Acevedo and

8 Mr. Stevenson tied off improperly and instructed them how to

9 tie properly?

10 A. What was that?

11 Q. What did you do next?

12 A. Once I got done with them and they said that they

13 weren't tied off, and I said let me get this straight. You

14 guys come from a building that we're doing 40-feet high, and

15 you guys have never been trained on how to use harnesses and

16 tie off? And they said no.

17 Q. Were you referring to another AMS job?

18 A. Yes, sir.

19 Q. What job was that?

20 A. That would be Westshore Yacht Club.

21 Q. Did you know that these two employees had worked at the

22 Westshore Yacht Club before?

23 A. Yes, I knew they'd come from that job.

24 Q. How did you know that?

25 A. Because I was told they were sending me two masons from

1 the Westshore Yacht Club.

2 Q. All right. After that, did you communicate with anyone  
3 from the AMS safety department?

4 A. Yes.

5 Q. Who?

6 A. When they told me that, I climbed down the scaffold, and  
7 I called Alex Feliz up, and I told him I had two guys out  
8 here that said they had not been trained how to tie off and  
9 use harnesses, which I knew wasn't right because it's an OSHA  
10 mandate that we've got teach everyone how to use it.

11 Q. And then what happened next?

12 A. He says where did they come from? And I told him from  
13 the yacht club. And he said everyone had been trained there,  
14 and he was going to send Alex over there and tell them, with  
15 the book, to see if they had signed it or not, which he  
16 thought they did, but he wanted to make sure. And if they  
17 didn't sign it -- well, if they did sign it and they're  
18 lying, that he would send them home.

19 Q. Alex was going to send who out there?

20 A. Ramirez. Fernando, Fernando Ramirez.

21 Q. And did Mr. Ramirez then arrive at UT?

22 A. Yes, about a little after lunch.

23 Q. All right. Did you speak with him when he arrived?

24 A. Yes, sir.

25 Q. All right. What did the two of you talk about?

1 A. He got out, showed me the book, and asked me what  
2 happened, and I explained to him what had happened, just like  
3 I explained to Alex what was going on, the same thing. And  
4 he said that they had signed it, and he showed me their names  
5 on the book, and he was going to talk to them.

6 Q. If you would look at the binder again --

7 A. Um-hum.

8 Q. -- and turn to Respondent's Exhibit Number 7 in  
9 evidence, behind tab number 7. And just briefly page through  
10 that document all the way to the end. It's 14 pages.

11 Mr. McNett, is this the document you were shown by  
12 Mr. Ramirez?

13 A. I'm on page 14. What page is that?

14 Q. Just page through the whole document.

15 A. Oh, okay.

16 JUDGE ROSAS: Respondent's 17. Respondent's 7, rather.

17 THE WITNESS: He showed me two pages with their names on  
18 it. That's what I'm looking for. Here's Luis. And I see  
19 Walter Stevens on here. Yeah, there's his name. Yes, them  
20 are the two documents that he showed me.

21 Q. BY MR. THOMAS: Did Mr. Ramirez show Mr. Acevedo and  
22 Mr. Stevenson that document or those pages?

23 A. He called them over there, and I did not stand around.  
24 I went to eat my lunch.

25 Q. All right. What happened after Mr. Ramirez spoke with

1 Mr. Acevedo and Mr. Stevenson?

2 A. He filled out a piece of paper.

3 MS. LEONARD: Objection, Your Honor, lack of predicate.  
4 The witness has just stated that he walked away to eat his  
5 lunch.

6 JUDGE ROSAS: Sustained.

7 Q. BY MR. THOMAS: All right, sure. At any other time of  
8 the day -- well, let me back up again. After you went to eat  
9 your lunch, did Mr. Acevedo and Mr. Stevenson remain on the  
10 jobsite?

11 A. Right after lunch time, when he got done filling out  
12 some paperwork with them, which he showed me after lunch,  
13 they were -- we told them they had to leave the job.

14 Q. When you say we, is that -- were you involved in that?

15 A. Yes.

16 Q. During this time, were you yelling at either Mr. Acevedo  
17 or Mr. Stevenson?

18 A. No, sir.

19 Q. Were you calling them liars?

20 A. No, sir.

21 Q. After they went home, did you have any occasion to speak  
22 to the AMS safety department later that day about what had  
23 happened?

24 A. Yes, sir.

25 Q. Okay, who did you speak to?

1 A. Alex called me roughly -- I hadn't left the job yet, so  
2 it was around 3:00, and he told me that they were going to  
3 dismiss Acevedo and Stevenson, so I had to do it in the  
4 morning.

5 Q. At any time up to this point had either Mr. Acevedo or  
6 Mr. Stevenson mentioned the Union to you?

7 A. About the thing? No. They didn't do it until the next  
8 morning.

9 Q. All right, we're going to get to that point. The next  
10 morning, May the 17th, did Mr. Acevedo and Mr. Stevenson  
11 report to work?

12 A. Yes, sir.

13 Q. And what happened after that?

14 A. When they came in, I told them I was going to need their  
15 harnesses back, everything that AMS had given them, because  
16 we were letting them go, that they were dismissed. And I  
17 think Mr. Stevenson said that he couldn't believe we were  
18 letting them go for the reasons we were letting them go for,  
19 which would be the fall protection. And Mr. Acevedo said we  
20 was doing it because we were -- they were union. And I told  
21 them, I says really? I'm union, and I'm not doing this. You  
22 mean it wasn't because you weren't tied off above 6 foot and  
23 weren't following the fall protection? So that wasn't the  
24 reason why I'm letting you go? The reason why I'm letting  
25 you go is because you're union? I said that don't make sense

1 to me.

2 Q. Did you ever tell Mr. Stevenson, after he was let go,  
3 that he would be rehired by AMS?

4 A. No, sir, because I think that was the second time I  
5 fired the guy.

6 Q. When you were interacting with Mr. Acevedo that morning,  
7 how would you describe your demeanor?

8 A. Normal.

9 Q. Were you smiling at him?

10 A. Yes, sir.

11 Q. Were you yelling at him?

12 A. No, sir.

13 Q. Did you make any reference to him fighting for his  
14 rights?

15 A. No, sir.

16 Q. Did you make any reference to this is America?

17 A. No, sir.

18 **(Respondent's Exhibit 18 marked for identification.)**

19 Q. BY MR. THOMAS: Mr. McNett, if you would turn in the  
20 binder to Respondent's Exhibit Number 18. Do you recognize  
21 that document?

22 A. Yes, sir.

23 Q. What is it?

24 A. It's a release form through AMS.

25 Q. Is that your signature at the bottom?

1 A. Yes, sir.

2 MR. THOMAS: We move the admission of Respondent's 18 in  
3 evidence.

4 MS. LEONARD: This is General Counsel's Exhibit 10.

5 MR. THOMAS: If it's a duplicate, then we will withdraw  
6 the request. Let me just double-check my General Counsel  
7 binder. It is. We'll withdraw the request to have 10 in  
8 evidence.

9 **(Respondent's Exhibit 18 withdrawn.)**

10 Q. BY MR. THOMAS: Mr. McNett, is this a document that you  
11 signed on May the 16th, 2016?

12 A. Yes, sir.

13 Q. Mr. McNett, did the Union or the upcoming election have  
14 anything to do with your decisions on May the 16th or May the  
15 17th, 2016?

16 A. No, sir.

17 Q. Are you aware of other AMS employees who were terminated  
18 for a fall protection violation?

19 A. Yes, sir.

20 Q. Are you familiar with an individual named Timothy  
21 Golphin (ph.)?

22 A. Yes, sir.

23 Q. All right. Who is Mr. Golphin?

24 A. He was a scaffold builder/laborer over at Daytona Beach,  
25 the Bethune-Cookman job.

1 Q. All right. Were you a foreman over at Daytona Beach?

2 A. Yes, sir.

3 Q. Did you have the opportunity to supervise Mr. Golphin?

4 A. Yes, sir.

5 Q. All right. Did you terminate Mr. Golphin?

6 A. Yes, sir.

7 Q. Why did you terminate him?

8 A. He was not tied off, and he was on his telephone during  
9 work hours.

10 Q. All right. Was he above 6 feet?

11 A. Oh, yeah, he was 38 to 40, but the fall protection rules  
12 for the general contractor over there was a hundred percent  
13 tie-off at any feet. Once you step foot on a scaffold on  
14 Bethune-Cookman, you had to be tied off.

15 Q. Did you witness Mr. Golphin not tie off and on his  
16 phone?

17 A. No.

18 Q. Do you know who did?

19 A. Yes.

20 Q. Who?

21 A. His name's Ernest Jasper.

22 Q. All right. Is Mr. Jasper an AMS employee?

23 A. He is now.

24 Q. Was he an AMS employee at the time?

25 A. Yes, and then he was laid off, and now he's back to work

1 for us again.

2 Q. When did Mr. Golphin's termination take place?

3 A. I can't give you the exact date. I'm not positive.

4 Q. Was it before or after Mr. Acevedo and Mr. Stevenson  
5 were terminated?

6 A. Oh, it was before, because I think it was at the  
7 beginning of 2016.

8 Q. Are you familiar with an AMS -- so are you familiar with  
9 an individual by the name of Brandon Carollo?

10 A. Yes, sir.

11 Q. Who is Mr. Carollo?

12 A. He was their pump guy at Bethune-Cookman, and he was a  
13 laborer.

14 Q. When you say their pump guy, was he an AMS employee?

15 A. Yes, sir.

16 Q. Did you have the opportunity to supervise Mr. Carollo as  
17 a foreman at Bethune-Cookman?

18 A. Yes, sir.

19 Q. Did you terminate Mr. Carollo?

20 A. Yes, sir.

21 Q. When did you do that?

22 A. Somewhere around in February of 2016.

23 Q. What were the circumstances that led you to terminate  
24 Mr. Carollo?

25 A. I come walking around the north side of Building C on

1 Phase 2, and he was on the scaffold tending masons doing  
2 brick. His harness was laying on top of the brick that had  
3 just been landed, and the rails were down, and he was  
4 probably -- it's above my head, so it was over 7 feet tall  
5 because I would be able to walk right underneath the  
6 scaffold.

7 Q. Is this something you witnessed yourself?

8 A. Yes, sir.

9 Q. Did you speak to Mr. Carollo about it?

10 A. Yes, sir.

11 Q. Did he have a response?

12 A. Yes, sir.

13 Q. What was the response?

14 A. He said F you.

15 Q. Were you aware of prior fall protection issues involving  
16 Mr. Carollo?

17 A. Yes, sir.

18 Q. All right. If you would, there's a stack of documents  
19 in front of you with GC on the sticky tabs in front of it.  
20 It's under your binder.

21 A. Uh-huh.

22 JUDGE ROSAS: Which one?

23 Q. BY MR. THOMAS: It's General Counsel's 8(d) and (e) in  
24 evidence. If you'll look at the bottom, there's a  
25 typewritten page with a letter in parentheses. If you'll

1 look at pages 8(d) and (e), and let me know when you're done.

2 A. 8(d) and 8(e). This is page 4 and page 7?

3 Q. If I could help you out, they're documents, and each of  
4 them say Hensel Phelps in the upper left. All right. If the  
5 witness is having trouble locating it, I've got a copy that I  
6 can provide.

7 A. 8(d) and 8(e)?

8 Q. 8(d) and 8(e).

9 A. Yeah, I see them, the last two.

10 Q. All right, look over those for a moment.

11 A. (Reviews document.) Okay.

12 Q. Have you ever seen those documents before?

13 A. No, I have not.

14 Q. All right. Are you at all familiar with the incidents  
15 that are discussed in those documents?

16 A. Yes, sir.

17 Q. All right. What do you know about those incidents?

18 A. I just heard that he had been written up twice by HP,  
19 which is Hensel Phelps.

20 MS. WALKER: Objection to the extent this is hearsay. I  
21 don't know who he heard it from.

22 THE WITNESS: I heard it from Brandon.

23 JUDGE ROSAS: Okay. Repeat the question about that  
24 document.

25 MR. THOMAS: Sure. I asked if he had any familiarity

1 with the incidents that are described in those documents.

2 JUDGE ROSAS: Let me see that for a second.

3 MR. THOMAS: And I could ask the question a different  
4 way.

5 JUDGE ROSAS: Hold on, hold on. Did you sign either (d)  
6 or (e)?

7 THE WITNESS: No, sir.

8 JUDGE ROSAS: Okay, sustained.

9 Q. BY MR. THOMAS: All right. Let me ask you this  
10 question. Prior to the fall protection violation involving  
11 Mr. Carollo, that you saw, do you have any information that  
12 anyone from AMS had seen Mr. Carollo engaged in other fall  
13 protection violations?

14 A. Yes, sir.

15 Q. All right. What's the information that you have?

16 A. I got the information from Hensel Phelps's safety  
17 director that Brandon Carollo had not been tied off and had  
18 been sent home twice.

19 Q. That's from Hensel Phelps, not from AMS, correct?

20 A. Correct. No one -- I mean, I shouldn't say it. I heard  
21 it from Bob Dutton, but that's hearsay.

22 Q. All right, Mr. McNett. I'm going to shift gears and  
23 talk about something entirely different.

24 A. Okay.

25 Q. Does AMS have a practice or policy with respect to the

1 Union's access to jobsites?

2 A. Yes, sir.

3 Q. What is that practice or policy?

4 A. That they can come on the jobsite and visit with any  
5 worker we have during lunchtime and break time.

6 Q. All right. Is there a standard workday at AMS jobsites?

7 A. Yes, sir.

8 Q. All right, what is a standard workday?

9 A. 7:00 to 3:30.

10 Q. When are the breaks?

11 A. 9:30 and 12:00.

12 Q. How long are the breaks?

13 A. Fifteen-minute breaks and 30-minute lunches.

14 Q. What are the reasons for the policy about union access?

15 A. Safety, production. You need the guys paying attention  
16 to what they're doing so they do their job right.

17 Q. Is that policy any different for any other person who  
18 might want to come on site and interact with AMS employees?

19 A. No, sir.

20 Q. If I'm driving a food truck, can I come on site and sell  
21 food to AMS employees while they're working?

22 A. That's up to the general contractor; it's not up to me.

23 Q. All right. And as a foreman on an AMS jobsite, would  
24 you allow someone to sell employees you supervise food while  
25 they're working?

1 A. No, sir.

2 Q. Do you know Mr. Bontempo?

3 A. Yes, sir.

4 Q. How is it that you know him?

5 A. He's a representative for the Union.

6 Q. Do you know whether Mr. Bontempo was aware of the

7 Company's policy on access?

8 A. I assume so, because very seldom did he ever come during

9 -- around lunch or the break time usually was the times he

10 showed up.

11 Q. Did you ever have occasion to discuss with Mr. Bontempo

12 whether he could or could not come onto a jobsite?

13 A. Just one time.

14 Q. All right, let's talk about the one time. When did that

15 happen?

16 A. That's when he come out to the University of Tampa.

17 Q. Do you remember when that was?

18 A. Yes. I don't know the date, but it was in May when I

19 hung up the flyers for the vote for the Union.

20 Q. All right. What happened on that day?

21 A. He showed up, and I asked him if he was here to take

22 pictures of the flyers, and he said no. And I think I said

23 are you sure? And he says no. Then I told him I was going

24 to have to ask him to leave.

25 Q. When he showed up, what time --

1 A. It was about 3:00, a little bit before 3:00.

2 Q. Were the masons still working?

3 A. Yes, sir.

4 Q. Let's talk a little bit more about the interaction.

5 Where on the jobsite were you when he came out?

6 A. At the Conex. When he walked up, I was just coming out  
7 of the Conex.

8 Q. For the record, what is a Conex?

9 A. That's where we keep all of our tools, and on this  
10 jobsite, that's where I kept most of my paperwork that wasn't  
11 in my truck, because we didn't have an office trailer, and  
12 that's where all of our business was conducted through the  
13 whole job.

14 Q. Why did you tell Mr. Bontempo that he had to leave?

15 A. Because we didn't want him out on the jobsite.

16 Q. All right. Did that have anything to do with the fact  
17 that people were still working?

18 A. Yes, sir.

19 Q. Did you say that Mr. Bontempo was no longer welcome at  
20 AMS jobsites, period?

21 A. No, sir.

22 Q. After you told Mr. Bontempo that, did he have any  
23 reaction?

24 A. Yes, sir.

25 Q. What was his reaction?

1 A. He said come on, Brent, really? And we went back and  
2 forth like that for a few minutes, a couple times, and I  
3 think Marc said something. He said come on, Mike. And then  
4 he asked me to come with him and let's talk, and we went over  
5 to his car in the parking lot.

6 Q. You said Marc. Who is that?

7 A. Marc Carney, our -- he does the manpower out in the  
8 field.

9 Q. Was anyone else from AMS present other than you and  
10 Marc Carney?

11 A. There was a gentleman, and I don't know his name, that  
12 was a union representative.

13 Q. Was anyone with Mr. Bontempo?

14 A. Yes, that was the guy.

15 Q. Okay.

16 A. It was just Marc and I, and he came walking up with  
17 another representative that I had never met before.

18 Q. All right. After that, did you continue to converse  
19 with Mr. Bontempo?

20 A. When we went out to his car, yes, sir.

21 Q. For how long did you chat with him out there?

22 A. Forty-five minutes to an hour.

23 Q. What were the things you talked about?

24 A. We talked about the vote, how if the vote went down,  
25 what was going to happen with my job title. If the Union was

1 going to represent me, what were they going to do for me,  
2 because I'm a union -- being a union member already, what  
3 type of pay are you going to try to discuss for me? He said  
4 a dollar an hour more. I said I'll go back to laying block  
5 for a dollar an hour more before I run work and the headaches  
6 I do for just a dollar an hour. We got to keep the prices  
7 down so we can afford it.

8 Q. About what time of the day did you finish talking with  
9 Mr. Bontempo?

10 A. It was about 10 to 4:00, 5 to 4:00. I was out there  
11 before 4:00, I do know that.

12 Q. Do you remember about what time employees left the job  
13 that day?

14 A. 3:30.

15 Q. Did they walk by you and Mr. Bontempo?

16 A. I could not tell you. I do not remember seeing anybody,  
17 but they could've because, where he was parked at, the whole  
18 parking lot was behind us, and I was facing towards the  
19 front. So I wasn't facing where everyone was parked, and a  
20 few of the guys that snuck and parked over where the foremen  
21 were, so I had a few guys park over in that area.

22 Q. Do you remember how many entrances there were to that  
23 job for the masons?

24 A. Two.

25 Q. Let me ask you this. Did Mr. Bontempo make any attempt

1 to talk to masons who were leaving the job for the day?

2 A. That day, no.

3 Q. You testified earlier, Mr. McNett, about receiving some  
4 communications from the Union in the mail.

5 A. Um-hum.

6 Q. Did you ever discuss those communications with  
7 Mr. Bontempo?

8 A. Yes, sir.

9 Q. What did the two of you talk about then?

10 A. It was one about AMS got a thing in the mail -- I can't  
11 remember the exact words -- that they were not paying their  
12 dues, they weren't up to date, and it was a bunch of bad  
13 stuff about AMS. So I called Mike up and asked him a  
14 question about it, and I kind of got a runaround, and I think  
15 he heard a few languages that he's heard before, but I was a  
16 little upset. It's a company I've worked for, for this many  
17 years, and you're going to badmouth them this way, and you  
18 represent a company that doesn't, that's not right.

19 Q. About when in time did this conversation occur?

20 A. I don't know if it was before -- I think it was before  
21 the thing about the vote or anything ever came out.

22 Q. You said you called him. You called his telephone?

23 A. Yes, sir.

24 Q. You have his phone number?

25 A. Yes, sir.

1 Q. Did Mr. Bontempo have any response to what you had said?

2 A. He kept telling me it's not that way. And I says, well,  
3 if it's not that way, that's what it's saying. I mean,  
4 you're printing something that they don't mean? You want it  
5 to sound something different? And I says, well, this is the  
6 way I'm taking it.

7 Q. Mr. McNett, let's go back a second to the toolbox talk  
8 that you had on May the 16th, 2016, at the University of  
9 Tampa. When you addressed the masons during your toolbox  
10 talk that morning, did you discuss the union election  
11 campaign at all?

12 A. I can't remember if I did or not. I think I did.

13 Q. Do you remember what you said?

14 A. It might've been -- yeah, because it was brought up  
15 about mason wages, and my theory on mason wages is that I had  
16 the -- the one with the most to lose from this vote because I  
17 had not been and I hadn't been invested yet. I was right on  
18 the border of getting enough time in to be invested for  
19 retirement. So if AMS gets out of the Union, I lose all of  
20 them years that I paid into it, and I don't get my pension.

21 Q. Were you referring to all of your personal services --

22 A. Yes, sir, that's what I told them. I says I have the  
23 most to lose if it doesn't pass.

24 Q. Do you know an individual by the name of Michael Mosley?

25 A. The name sounds familiar.

1 Q. All right. Let me see if I can refresh your  
2 recollection. If you'll just give me a moment to see if I  
3 can get a document.

4 All right, Mr. McNett, if you'll look at the pile of  
5 exhibits in front of you again. This is the paper file, and  
6 if you will look at General Counsel's Exhibit 15(a) and (b)  
7 in evidence. And once you've found them, if you'll look  
8 through them for a moment. It's just two pages, the ones  
9 that have a handwritten -- it says GCX-15(a) and GCX-15(b).

10 A. Okay.

11 Q. And if you'll look at those for a moment.

12 A. (Reviews document.) All right.

13 Q. All right. Does that refresh your recollection as to  
14 who Michael Mosley is?

15 A. No, it does not.

16 Q. All right. Let me ask this question. Have you ever had  
17 occasion to terminate an employee for failing a drug test?

18 A. Yes, sir.

19 Q. All right. If you'll look again at that exhibit, the  
20 second page with 15(b) at the bottom, it's handwritten there,  
21 he got hurt, failed post-accident DT. That's not your  
22 handwriting, is it?

23 A. No, sir.

24 Q. Does this refresh your recollection as to any accident  
25 Mr. Mosley might've been involved in?

1 A. No, sir.

2 Q. Okay.

3 A. It's got Bob's name on it, so --

4 Q. Who is Bob?

5 A. He was the superintendent on Phase 1, and he was the  
6 overall superintendent on Phase 2.

7 Q. Just so the record is complete, when you say Phase 1 and  
8 Phase 2 --

9 A. Bethune-Cookman Phase 1 and Phase 2. He ran Phase 1 as  
10 a superintendent, and I ran Phase 2, and he oversaw Phase 2,  
11 also.

12 Q. Do you know Bob's last name?

13 A. Dutton.

14 MR. THOMAS: Your Honor, I want to get now into the  
15 challenges issue. I'm not sure of the order approved, if  
16 Your Honor would like to have Counsel for the General Counsel  
17 and the Union ask questions now and then us move to the  
18 challenges issue, or if we should just keep going on with our  
19 examination.

20 JUDGE ROSAS: I don't see any reason why you can't  
21 reserve your cross and do it all at once --

22 MS. WALKER: That's fine. He can continue.

23 JUDGE ROSAS: -- the objections and challenges.

24 MS. WALKER: Yes, Your Honor, that's fine.

25 JUDGE ROSAS: So, go ahead.

1 Q. BY MR. THOMAS: Okay. Mr. McNett, you just testified  
2 that you worked for a time at the Bethune-Cookman job.

3 A. Yes, sir.

4 Q. All right. What were the dates where you worked there?

5 A. The middle of May, what was that, 2015 until April of  
6 2016.

7 Q. Did you work there as a foreman?

8 A. Yes, sir.

9 Q. Would you describe what AMS's work was at Bethune-  
10 Cookman?

11 A. We did Phase 1 and Phase 2. There were two buildings on  
12 each phase. They were pretty much the same, everything  
13 block. We did the concrete, we did the block, we did the  
14 brick on both phases.

15 Q. All right. Did masons leave the Bethune-Cookman job  
16 voluntarily at various times?

17 A. Yes, sir.

18 Q. All right. Can you testify a little bit as to that?  
19 Did people leave in 2015?

20 A. Fifteen? Not that I know of, no.

21 Q. Did people leave in 2016?

22 A. Yes, sir.

23 Q. Do you have any specific recollection of people leaving?

24 A. In 2016, yes, I do, because we almost didn't hit our  
25 date.

1 Q. Okay. Do you remember particularly when people left?

2 A. It was probably -- let's see, I was out of there in  
3 April, so it was probably the end of February and March we  
4 had people starting to leave.

5 Q. When you say we almost didn't hit our date, what does  
6 that mean?

7 A. We had date we had to hit with all the block and brick  
8 to be laid, not the punch-out and clean-out, but all the  
9 block and brick had to be laid by a certain date, or there  
10 was a \$25,000-a-day fine.

11 Q. At the time the employees quit, was the Bethune-Cookman  
12 job over?

13 A. No, sir.

14 Q. Did you lay any of these individuals off?

15 A. No, sir.

16 Q. Did you tell the employees --

17 MS. LEONARD: Objection.

18 MS. WALKER: Objection, I don't think --

19 JUDGE ROSAS: Sustained.

20 Q. BY MR. THOMAS: Do you have the authority to lay people  
21 off a job?

22 A. Yes, sir.

23 Q. Okay. With respect to the individuals who you testified  
24 quit in February and March of 2016, did you lay them off?

25 A. No, sir.

1 MS. WALKER: Objection.

2 JUDGE ROSAS: Sustained. All right, we've kind of  
3 leaped from witnesses leaving, in your words, to witnesses  
4 quitting and/or not laying off.

5 MR. THOMAS: Sure. If that's the basis for the  
6 objection, Your Honor, I can --

7 JUDGE ROSAS: Let's start off with did you lay anybody  
8 off on that job?

9 THE WITNESS: No, sir.

10 JUDGE ROSAS: Okay, ask your next question.

11 MR. THOMAS: Thank you, Your Honor.

12 Q. BY MR. THOMAS: The people who left Bethune-Cookman in  
13 2016, did any of them express to you the reason why they were  
14 leaving?

15 A. Yes, sir.

16 Q. What did they tell you?

17 A. They were going to different jobs because they wanted to  
18 work. They didn't want to quit working with AMS; they wanted  
19 to stay working when it was done.

20 Q. If I gave you a particular person's name, could you tell  
21 me whether that person left the Bethune-Cookman job before it  
22 was over?

23 A. Yes, sir.

24 Q. All right. Jacob Barlow?

25 A. He left before it was over.

1 Q. Jim Clark?

2 A. He left before it was over.

3 Q. Forrest Greenlee?

4 A. He left before it was over.

5 Q. Dustin Hickey?

6 A. He left before it was over.

7 Q. Robert Pietsch?

8 A. He left before it was over.

9 Q. David Wrench?

10 A. He left before it was over.

11 Q. Mark France?

12 A. He left way before it was over.

13 Q. And George Reed?

14 A. He left way -- no, he towards the end. Yes, he left.

15 Q. Are these individuals that you supervised as a foreman?

16 A. Every one of them.

17 Q. Did you terminate any of the individuals who I just

18 named?

19 A. No, sir.

20 Q. Did you lay off any of the individuals I just named?

21 A. No, sir.

22 **(Respondent's Exhibit 27 marked for identification.)**

23 Q. BY MR. THOMAS: If you would turn in the binder to

24 Respondent's Exhibit Number 27, and if you would look over

25 that briefly, please. There were seven pages.

1 A. Okay.

2 Q. Mr. McNett, do you recognize what those documents are?

3 A. Yes, sir.

4 Q. What are they?

5 A. Their reason for leaving, they quit, and I signed them.

6 Q. Is that your signature at the bottom of each page?

7 A. Yes, sir.

8 Q. What employees are these forms for?

9 A. These forms are for when they leave the job and why they  
10 leave the job.

11 Q. Would you name the individuals that are in them?

12 A. David Wrench, Robert Baker, Robert Pietsch, Jacob  
13 Barlow, James Clark, Dustin Hickey, Forrest Greenlee, and  
14 that's it.

15 Q. Did you sign these forms on or about the time the  
16 individuals left AMS?

17 A. Yes, sir.

18 MR. THOMAS: We move the entry of Respondent's Exhibit  
19 Number 27 into evidence, please.

20 MS. WALKER: No objection for Petitioner.

21 JUDGE ROSAS: Respondent's 27 is received.

22 **(Respondent's Exhibit 27 received in evidence.)**

23 Q. BY MR. THOMAS: All right, Mr. McNett, are you familiar  
24 with an individual by the name of John Smith?

25 A. Yes, sir.

1 Q. Who is Mr. Smith?

2 A. He was a mason out on Bethune-Cookman Phase 2 job.

3 Q. Did you supervise Mr. Smith?

4 A. Yes, sir.

5 Q. Did there come a time when you had to terminate  
6 Mr. Smith?

7 A. Yes, sir.

8 Q. Would you tell us the circumstances of his termination?

9 A. We had to tear out a lot of his work that he was doing,  
10 and then I had someone else who had to go fix it.

11 Q. Was his work product acceptable work product for AMS?

12 A. No, sir.

13 Q. Do you recall when was he terminated?

14 A. No, I don't. It was sometime in the middle of the  
15 interior work of Phase 2, but I'm not sure what the date is.

16 Q. Are you familiar at all with AMS's employee handbook?

17 A. Yes, sir.

18 Q. Are you familiar with the reasons in that handbook given  
19 as examples of when an employee can be terminated?

20 A. When?

21 Q. Given as examples of why an employee may be terminated.

22 A. I'm not positive what it says.

23 Q. All right. Are you familiar with an individual by the  
24 name of Robert Harvey?

25 A. Yes, sir.

1 Q. Who is Mr. Harvey?

2 A. He was a mason that worked out there.

3 Q. When you say out there, where?

4 A. Out at Phase 2 at Bethune-Cookman.

5 Q. Did you supervise Mr. Harvey?

6 A. Yes, sir.

7 Q. Did there come a time when you terminated his  
8 employment?

9 A. Yes, sir.

10 Q. Would you tell us how and why that happened?

11 A. Poor attendance and not showing up on time. And we were  
12 putting him in a hotel for part of his pay or for his pay.  
13 We were paying for people's hotel rooms, and he wasn't  
14 showing up and coming in late, and I told him if it didn't  
15 stop, I had to terminate him because we weren't going to pay  
16 for a room if he wasn't working.

17 Q. Mr. McNett, I'm going to backtrack a little bit.

18 **(Respondent's Exhibit 32 marked for identification.)**

19 Q. BY MR. THOMAS: If you'd take out the exhibit binder and  
20 look at Respondent's Exhibit No. 32, and take a look at that  
21 document.

22 A. Yes, sir.

23 Q. Do you recognize what that is?

24 A. Yes, sir.

25 Q. What is it?

1 A. It's a termination -- reason for leaving, termination,  
2 and I signed it.

3 Q. That's your signature at the bottom?

4 A. Yes, sir.

5 MR. THOMAS: We move the entry of Respondent's 32 in  
6 evidence.

7 MS. WALKER: Voir dire, Your Honor?

8 JUDGE ROSAS: Sure.

9 **VOIR DIRE EXAMINATION**

10 Q. BY MS. WALKER: Mr. McNett, did you complete this form?

11 A. Did I write that?

12 Q. Right.

13 A. No, a lady in the office wrote it in front of me, and I  
14 signed it.

15 Q. Okay. And was it completed and signed on the same day?

16 A. On the day I signed it?

17 Q. Yes.

18 A. No, I signed it on the 18th. It wasn't done on the  
19 15th. I signed it on the 18th.

20 Q. Okay.

21 A. There's two different dates on there.

22 Q. Yes. I believe the 15th day explains when the  
23 employee --

24 A. Right.

25 Q. -- was terminated.

1 A. I signed it. Okay.

2 Q. You signed it on the 18th, and it was completed on the  
3 18th --

4 A. Yes, ma'am.

5 Q. -- is that correct?

6 A. Yes, ma'am.

7 MS. WALKER: No objection.

8 JUDGE ROSAS: Okay, Respondent's 32 is received.

9 **(Respondent's Exhibit 32 received in evidence.)**

10 **DIRECT EXAMINATION (cont.)**

11 Q. BY MR. THOMAS: Mr. McNett, looking at Respondent's 32,  
12 is that accurate when it says last day worked, Mr. Smith,  
13 January 15th, 2016?

14 A. I'd have to look at the time sheet to be specific on the  
15 date, but yes, that's pretty close to that time.

16 **(Respondent's Exhibit 29 marked for identification.)**

17 Q. BY MR. THOMAS: If you would turn up in your binder to  
18 Exhibit Number 29. Do you recognize that document?

19 A. Yes, sir.

20 Q. What is it?

21 A. That's a document that was written up for Robert Harvey.

22 Q. Do you know who wrote it up?

23 A. I'm assuming Alex did. I do not know that.

24 Q. Is that your signature at the bottom?

25 A. Yes, sir.

1 MR. THOMAS: We move the admission of Respondent's 29  
2 into evidence.

3 MS. WALKER: Your Honor, I'm going to object to the  
4 extent it's not a complete document. There's a "See  
5 attachment" on the first line, and I don't know what that is.

6 Q. BY MR. THOMAS: All right, let me ask the witness.  
7 Mr. McNett, where it says "See attached TS," do you know what  
8 TS is?

9 A. No, I do not.

10 Q. All right.

11 JUDGE ROSAS: Let's not talk out of turn here.

12 MR. THOMAS: Yes, sir.

13 JUDGE ROSAS: Or hint, hint the witness.

14 Q. BY MR. THOMAS: If you'll look at the date on the top  
15 where it says October the 9th, 2015, to the best of your  
16 recollection, is that when you terminated or when Mr. Harvey  
17 was terminated?

18 A. That, I couldn't tell you the date. I do know it was on  
19 a Saturday is when I fired him, but I don't know the exact  
20 date.

21 Q. As a supervisor, as a foreman at Bethune, do you recall  
22 whether Mr. Harvey worked into the year 2016?

23 A. That I do not remember. But yes, he had to because I  
24 was on Phase 2, and we were doing the brick, and he was doing  
25 it, so yes.

1 Q. Was Mr. Harvey terminated before the job was over?

2 A. Yes, sir.

3 MR. THOMAS: Your Honor, may we have a moment? We may  
4 be done with our direct examination of the witness.

5 JUDGE ROSAS: Sure.

6 **(Pause.)**

7 MR. THOMAS: No further questions.

8 JUDGE ROSAS: Are you offering Respondent's 29? That  
9 was pending. So there was --

10 MR. THOMAS: The witness has authenticated it, but I  
11 mean, we can -- it's incomplete, and we do admit that there  
12 was an attachment that we don't have.

13 JUDGE ROSAS: Yeah.

14 MR. THOMAS: Yeah, we'll offer it into evidence just as  
15 it is.

16 MS. WALKER: The same objection.

17 JUDGE ROSAS: Well, what I can do is direct the  
18 Respondent to seek to obtain the attachment, or if you have  
19 any records, okay, and we'll follow up on that. The exhibit  
20 will be subject to being stricken on motion, but I'm going to  
21 receive it. There's sufficient foundation. You know, unless  
22 there's some argument that you can make about its inherent  
23 reliability. He has testified with respect to the separation  
24 of this person from the project, and in this sense, it  
25 provides some corroboration.

1 MS. WALKER: There is no objection as far as  
2 authenticity goes. It's just the completeness, to know what  
3 the attachment was.

4 JUDGE ROSAS: Right, right. So I'm going to receive it  
5 conditionally, Respondent's 29, over objection.

6 **(Respondent's Exhibit 29 received in evidence.)**

7 JUDGE ROSAS: All right. You have no further questions  
8 of this witness?

9 MR. THOMAS: Correct.

10 JUDGE ROSAS: How long do you think your cross is going  
11 to be?

12 MS. WALKER: I would anticipate the cross being 40  
13 minutes, maybe.

14 JUDGE ROSAS: We're going to break at this point. We'll  
15 resume tomorrow at 9:00 a.m.

16 **(Whereupon, at 4:41 p.m., the hearing in the above-entitled**  
17 **matter was continued, to resume the next day, Thursday,**  
18 **February 9, 2017, at 9:00 a.m.)**

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## CERTIFICATION

2 This is to certify that the attached proceedings before  
3 the National Labor Relations Board (NLRB), Region 12, in the  
4 matter of **ADVANCED MASONRY ASSOCIATES, LLC, d/b/a ADVANCED**  
5 **MASONRY SYSTEMS**, Case No. 12-RC-175179 and 12-CA-176715, at  
6 Tampa, Florida, on February 8, 2017, was held according to  
7 the record, and that this is the original, complete, and true  
8 and accurate transcript that has been compared to the  
9 recording, at the hearing, that the exhibits are complete and  
10 no exhibits received in evidence or in the rejected exhibit  
11 files are missing.

Ann McConnell

Ann Connell

Official Reporter

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12

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In the Matter of:

**ADVANCED MASONRY ASSOCIATES, LLC,**  
**d/b/a ADVANCED MASONRY SYSTEMS,**

Employer/Respondent,  
and

**BRICKLAYERS AND ALLIED**  
**CRAFTWORKERS, LOCAL 8 SOUTHEAST,**

Petitioner/Charging Party.

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Case No. **12-RC-175179**  
**12-CA-176715**

The continuation of the above-entitled matter came on for hearing pursuant to notice, before **MICHAEL A. ROSAS**, Administrative Law Judge, at the **National Labor Relations Board, 201 East Kennedy Boulevard, Suite 530, Tampa, Florida**, on **Thursday, February 9, 2017**, at **9:00 a.m.**

**A P P E A R A N C E S**

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**On Behalf of the Employer/Respondent:**

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**Also Present:**

CIRA PEACOCK, Spanish Interpreter  
Link Translations

		<u>I N D E X</u>				<u>VOIR</u>
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
1						
2						
3						
4						
5	Brent McNett	--	669	715	721	716
6			684			
7						
8	Brian Canfield	723	733	--	--	--
9						
10	Mario Morales	753	765	776	--	--
11			773			
12						
13	Coy Hale	780	792	807	--	790
14			795			
15						
16	Marc S. Carney	811	830	--	--	825
17			832			
18						
19	Gerardo Luna	845	850	--	--	--
20						
21	Ronald Karp	856	879	--	--	867
22			883			871
23						876
24						
25	Robert Dutton	894	907	--	--	--
26						
27	Aleksei Feliz	910	924	932	--	--
28			926			

1	<u>E X H I B I T S</u>		
2	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	GENERAL COUNSEL'S		
4	GC-20	676	684
5	GC-21	677	684
6	GC-22	678	684
7	GC-23	678	684
8	GC-24	679	684
9	GC-25	681	684
10	GC-26	682	684
11	GC-27	683	684
12			
13	CHARGING PARTY'S		
14	CP-26(a) through 26(e)	684	684
15			
16	RESPONDENT'S		
17	R-12	--	716
18	R-28	875	876
19	R-31	789	829
20	R-43	863	864
21	R-44	865	867
22	R-45	868	871
23	R-46	868	871
24	R-47	869	871
25	R-48	869	871

1	<u>E X H I B I T S</u>		
2	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	RESPONDENT 'S		
4	R-49	869	871
5	R-50	869	871
6	R-51	870	871
7	R-52	870	871
8	R-53	870	871
9	R-60	915	918
10			
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1 P R O C E E D I N G S

2 (Time Noted: 9:33 a.m.)

3 JUDGE ROSAS: All right, on the record.

4 Cross-examination.

5 (Whereupon,

6 BRENT McNETT

7 was recalled as a witness by and on behalf of the Respondent  
8 and, having been previously duly sworn, was examined and  
9 testified as follows:)

10 CROSS-EXAMINATION

11 Q. BY MS. LEONARD: Good morning, Mr. McNett.

12 A. Good morning.

13 Q. My name's Caroline Leonard. I am an attorney for the  
14 National Labor Relations Board. I have a couple of questions  
15 for you today.

16 A. Okay.

17 Q. I'd like to take you back first to the University of  
18 Tampa job.

19 A. All right.

20 Q. You were the foreman there, correct?

21 A. Correct.

22 Q. And you said that outside that project, the masons were  
23 laying a veneer of brick over coated or treated drywall of  
24 some kind, correct?

25 A. Yes, ma'am.

1 Q. Okay. The columns that they were building inside, were  
2 those also a veneer over a drywall?

3 A. Yes, ma'am.

4 Q. Okay. And the masons were working on second floor  
5 columns on May 16th, 2016, correct?

6 A. Yes, ma'am.

7 Q. Had they built any columns on the first floor?

8 A. Yes, ma'am.

9 Q. Okay. And had they built the first floor columns before  
10 they built the second floor columns?

11 A. Not all of them.

12 Q. Okay. How many had they built?

13 A. Three, I think it was.

14 Q. Okay. And how many columns were being built, in total,  
15 on the first floor?

16 A. I'm not positive. Probably 1, 2, 3 -- close to 8 to 10.

17 Q. Okay. And how many columns were being built on the  
18 second floor?

19 A. The same amount.

20 Q. Okay. Were they over each other?

21 A. Yes, ma'am.

22 Q. Okay. And there were two masons building each column,  
23 correct?

24 A. Correct.

25 Q. And masons worked side by side on the column, instead of

1 one over each other?

2 A. Correct.

3 Q. That's how they split the work?

4 A. Yes, ma'am.

5 Q. Okay. So one mason would be doing the left side face  
6 and the left half of the front face, while the other would be  
7 the corresponding work on the right, correct?

8 A. Yes, ma'am.

9 Q. Okay. And how fast can a skilled mason lay a brick  
10 veneer, in terms of square feet?

11 A. Some guys, you can get 200 brick a man, up to 400 brick  
12 a man. It just depends.

13 Q. Per day or per hour?

14 A. Per day.

15 Q. Okay. And so how long would it take to build, for each  
16 pair of masons to finish a single column?

17 A. We were going two lifts, then we'd have to restock it,  
18 so they'd get about halfway up in a day.

19 Q. Okay. And then they'd finish the second half the second  
20 day?

21 A. Yes, ma'am.

22 Q. Okay. And what was that word you said at the beginning  
23 of that sentence? They were going two something or --

24 A. They'd go up so high.

25 Q. No, no. Just can you repeat your entire last answer? I

1 believe you said a word, and I just didn't understand it.

2 A. What was the question again?

3 Q. The question was how long did it take a pair of masons  
4 to complete a column.

5 A. They can lay anywhere from 200 to 400 -- oh, complete a  
6 column?

7 Q. Uh-huh.

8 A. It would take them 2 days.

9 Q. Okay. And what position did Mr. Ernest Jasper (ph.)  
10 hold at the BCU job?

11 A. BC job, he was a scaffold builder and a tender.

12 Q. Okay. So he was not a manager of any kind?

13 A. No, ma'am.

14 Q. And he was not a supervisor of any kind?

15 A. No, ma'am.

16 Q. Did he have the power to hire or discharge employees?

17 A. No, ma'am.

18 Q. Did he have any power to discipline employees?

19 A. No, ma'am.

20 Q. Do you recall giving an affidavit to Board Agent Mark  
21 Heaton on July 13th, 2016?

22 A. I'm not sure what date it was, but yes, I did.

23 Q. Does that sound about right, July of last year?

24 A. Yes.

25 Q. Do you recall telling Mr. Heaton that you instructed

1 Mario Morales to explain to Mr. Acevedo and to Mr. Stevenson  
2 how to tie off on the morning of May 16th?

3 A. Yes, ma'am.

4 Q. And was Mr. Morales disciplined for not ensuring that  
5 Mr. Acevedo and Mr. Stevenson were tied off properly, after  
6 you had instructed him to explain how to do so?

7 A. I did not. No, ma'am.

8 Q. Do you recall telling Mr. Heaton that when you spoke to  
9 Mr. Acevedo and Mr. Stevenson later that day, May 16th, that  
10 Mr. Acevedo and Mr. Stevenson said that they had not been  
11 trained properly on fall protection?

12 MR. THOMAS: Yeah, I want to object to the line of  
13 questioning. If Ms. Leonard's going to impeach him with his  
14 affidavit, I'd like for him to see the affidavit while she  
15 does that. I'm not sure what the intent is here.

16 JUDGE ROSAS: Are you referring to affidavit testimony?

17 MS. LEONARD: I am.

18 JUDGE ROSAS: Okay. So why don't you show it to him?

19 MS. LEONARD: We're going on page 4.

20 MR. THOMAS: I've had copies. I just want Mr. McNett  
21 to see it.

22 Q. BY MS. LEONARD: This particular one is line 16. Line  
23 16, right there. Why don't you read that.

24 A. "Acevedo and Stevens told me they had not been trained  
25 properly."

1 Q. Okay. Do you recall saying that to Mr. Heaton?

2 A. Yes.

3 Q. Okay. And do you recall your testimony yesterday that  
4 Mr. Acevedo told you that he wasn't going to fall and that  
5 you told him that no one intends to fall; that's why they  
6 call it an accident?

7 A. Yes, ma'am.

8 Q. Okay. Can you show me where in the affidavit you told  
9 that to Mr. Heaton?

10 A. It's somewhere in here.

11 Q. Okay. Take a minute and look, and let me know if you  
12 find it.

13 A. It says, "Acevedo said, I do not intend to fall. OSHA  
14 policy is not to tie off on the scaffold. And I told Acevedo  
15 that it's a written policy to tie off on scaffold, that if  
16 OSHA came to the job and found that we were not complying  
17 with our own fall protection policy, they could fine us. I  
18 then asked Acevedo, have you ever been trained about the  
19 harnesses? He said no."

20 Q. Okay. That's enough. Thank you. If you look through  
21 it, you won't find that you said that it was an accident or  
22 that that's why they call it an accident. Do you recall --

23 MR. THOMAS: Objection to the form. In fact, was that  
24 question --

25 JUDGE ROSAS: Is that --

1 MR. THOMAS: -- or a statement by counsel?

2 JUDGE ROSAS: Yeah. That sounds like a question.

3 MS. LEONARD: Sorry.

4 JUDGE ROSAS: Is that correct, sir?

5 MS. LEONARD: Is that correct?

6 JUDGE ROSAS: It doesn't cite that in the affidavit?

7 THE WITNESS: I thought I seen it in -- I thought I said  
8 it in here.

9 Q. BY MS. LEONARD: Okay. You can take a moment and look  
10 through it. You don't have to read it out loud.

11 A. Okay.

12 (Reviews document.) Unless it's somewhere else in here,  
13 I could have swore I said that.

14 Q. Okay.

15 A. Said that.

16 Q. And at the time that you gave that affidavit to  
17 Mr. Heaton, you swore that it was true and correct, correct?

18 A. Yes, ma'am.

19 Q. And you testified yesterday that Mr. Stevenson and  
20 Mr. Acevedo were the first people you saw when you came up  
21 the stairs to the second floor, correct?

22 A. Correct.

23 Q. After you checked on Mr. Acevedo and Mr. Stevenson's  
24 tie-off, and you didn't go around and check how any of the  
25 other masons were tied off, did you?

1 A. They were right next to them.

2 Q. Okay.

3 A. I could see them from where I was standing at.

4 Q. Okay. But you didn't specifically go check on them, did  
5 you?

6 A. Yeah. I turned around and looked right at them. I  
7 could see them from where I was standing.

8 Q. How far apart were each of the columns from each other?

9 A. Oh, 18 feet.

10 Q. Okay. And how many pairs of masons were working that  
11 day?

12 A. I couldn't be exact, but I think there was three sets of  
13 scaffolds that they were working on.

14 Q. Okay.

15 A. So they were side by side.

16 Q. Okay. And now, if you could turn, or direct your  
17 attention to the stack of pictures there in front of you.

18 MS. LEONARD: Your Honor, if I may approach the witness.

19 **(General Counsel's Exhibit 20 marked for identification.)**

20 Q. BY MS. LEONARD: I'm going to give you a permanent  
21 marker, and we're just going to go through these. Do you  
22 know what the piece of equipment depicted on General  
23 Counsel's Exhibit Number 20 is?

24 A. Yes, ma'am.

25 Q. What is that called?

1 A. That's a anchor, 5,000-pound anchor for hollow core.

2 Q. Okay. Could you write that on the top right of that?

3 And were any of the masons at the University of Tampa job  
4 using this anchor while they working inside on the columns?

5 A. No, ma'am.

6 **(General Counsel's Exhibit 21 marked for identification.)**

7 Q. BY MS. LEONARD: Okay. Let's go to number 21. Do you  
8 know what this piece of equipment is?

9 A. Yes. It's a strap that we tie off with.

10 Q. Okay. And how long is the strap?

11 A. Six foot.

12 Q. Okay. Could you please write "6-foot strap" on the top  
13 of that? Were any of the masons tied off using this strap at  
14 the University of Tampa job?

15 A. Yes.

16 Q. Okay. And did any of them tie off by sliding either of  
17 the rings through the other?

18 A. Yes, ma'am.

19 Q. Okay. Which ring goes through the other? The one on  
20 the left or the one on the right?

21 A. The one on the right goes through the one on the left.

22 Q. Okay. And that's as we are looking at this document,  
23 the GCX-21 on the bottom right, correct?

24 A. Correct.

25 Q. Okay. Thank you very much.

1 **(General Counsel's Exhibit 22 marked for identification.)**

2 Q. BY MS. LEONARD: If we could go to GCX-22, do you know  
3 what this piece of equipment is?

4 A. Yes.

5 Q. What is this?

6 A. It's a lanyard.

7 Q. Okay. And how long is this piece of equipment?

8 A. That one, I do not know, probably 5 foot.

9 Q. Okay. Do lanyards come in varying lengths?

10 A. Yes, ma'am.

11 Q. Okay. Did any of the Tampa mason -- the University of  
12 Tampa masons, excuse me, use this piece of equipment inside?

13 A. No, ma'am.

14 Q. Okay. Could you please write "lanyard" at the top?

15 Okay, thank you.

16 **(General Counsel's Exhibit 23 marked for identification.)**

17 Q. BY MS. LEONARD: And now if we could go to General  
18 Counsel's Exhibit Number 23, do you recognize what this piece  
19 of equipment is?

20 A. Yes, ma'am.

21 Q. What is this?

22 A. It's an 18-inch strap.

23 Q. Okay. And what is this used for?

24 A. For hooking around the scaffold, to tie off.

25 Q. Okay. And what part goes through what part to tie off

1 on the scaffolding?

2 A. It goes around, and the metal part goes through the loop  
3 at the other end.

4 Q. Okay. Could you please write "18-inch strap" on there  
5 for us, please? Okay. Thank you very much. And did any of  
6 the masons at the University of Tampa job use GCX-23, the 18-  
7 inch strap?

8 A. Yes. This one here? Yes.

9 Q. Yes. While they were working inside on the columns?

10 A. Some of them have that one.

11 Q. Okay. Does AMS issue these straps?

12 A. Yes, ma'am.

13 **(General Counsel's Exhibit 24 marked for identification.)**

14 Q. BY MS. LEONARD: Okay. And now looking at General  
15 Counsel's Exhibit Number 24, this is a device that some of  
16 the masons refer to as a yoyo, correct?

17 A. Correct.

18 Q. And what is the proper name for it?

19 A. Retractor.

20 Q. Okay. And how long does the cord that comes out of the  
21 retracting part go?

22 A. This one, without seeing, I think the other side has the  
23 dimension on. They come in different sizes.

24 Q. Okay.

25 A. We have them in 4, 5, 11, 20, 30, 60.

1 Q. Okay.

2 A. We have all different sizes.

3 Q. Okay. And it's called a retractor?

4 A. Yes, ma'am.

5 Q. Okay. And could you describe how this is used to hook  
6 up to equipment?

7 A. You hook one end up to one of the straps.

8 Q. Which end hooks up to the strap?

9 A. It's up to you, whatever you want to do. I prefer to  
10 hook the heavy part to the strap so it's not on my back, and  
11 then I hook the other part, the other end to my back --

12 Q. Okay.

13 A. -- when I hook it up. Some people do it the other way  
14 around because it's easier to hook the heavy part up and then  
15 take the back, the other end, and hook it all the time  
16 because it's hard to reach to your back.

17 Q. Okay. And so, for the record, the part that comes out  
18 of the retractor, which is the part with the big G on it, the  
19 part that comes out is the part with the cord, and then the  
20 hook, after a little ways, as opposed to the --

21 A. The one with the big G on it is where the all the  
22 strap's at, that's the retractor part.

23 Q. Correct. And so the strap, when it comes out, it comes  
24 out the bottom --

25 A. Correct.

1 Q. -- as we look at these, correct?

2 A. Correct.

3 Q. Okay. Could you please write "retractor" on this  
4 document? Thank you very much. And now General Counsel's --  
5 I'm sorry, the -- were the masons at the University of Tampa  
6 job using the retractor?

7 A. This particular one? I'm not sure.

8 Q. Were the --

9 A. We have different styles. They've come out with  
10 different ones.

11 Q. Okay. How much variance is there between the different  
12 styles?

13 A. Not much. Just different brands.

14 Q. Okay. Did every mason have to use a retractor?

15 A. Yes, ma'am.

16 Q. Okay. And were they all using retractors?

17 A. Yes, ma'am.

18 Q. Including Mr. Acevedo and Mr. Stevenson?

19 A. Yes, ma'am.

20 **(General Counsel's Exhibit 25 marked for identification.)**

21 Q. BY MS. LEONARD: Okay. And General Counsel's Exhibit  
22 Number 25, what is this?

23 A. I think it was the same as the first one.

24 Q. Okay. So that would be a 5,000-pound anchor?

25 A. Five thousand pound anchor that goes into a hollow core.

1 Q. Okay. Why is it different from the first one, if you  
2 know?

3 A. I don't think it is.

4 Q. Okay. Could you please write your name for this anchor  
5 on top?

6 A. You want my name on the top of it?

7 Q. The name of the anchor, not your name.

8 A. Yeah.

9 Q. Okay. And were any of the masons at the University of  
10 Tampa job working inside on the columns using this anchor,  
11 Number 25?

12 A. Number 25? No, ma'am.

13 **(General Counsel's Exhibit 26 marked for identification.)**

14 Q. BY MS. LEONARD: Okay. And Number 26 is next. Do you  
15 know what this is?

16 A. Never used that. I've seen them, but I've never used  
17 this type.

18 Q. Okay. Do you know what it is, because you've seen it?

19 A. It's an anchor you either tap down or shoot it to the  
20 ground and tie off to it.

21 Q. Okay. And does it have a name that you know of?

22 A. No. I do not know the name of it.

23 Q. Does the name "plate anchor" sound right to you?

24 A. Could be. I don't know.

25 Q. Okay. Did any of the masons at the University of Tampa

1 job working inside use this anchor?

2 A. No, ma'am.

3 Q. Okay. Want to go ahead and flip it over?

4 A. Put what?

5 Q. Flip it over.

6 A. All right.

7 **(General Counsel's Exhibit 27 marked for identification.)**

8 Q. BY MS. LEONARD: And then the last one we have here is  
9 General Counsel's Exhibit Number 27. Do you recognize this  
10 piece of equipment?

11 A. I've seen them, but never used it.

12 Q. Do you know what it's called?

13 A. No, I don't know the specific name to it.

14 Q. Okay. Do the masons on the job sometimes refer to it as  
15 a Red Head anchor?

16 A. That, I do not know.

17 Q. Okay. Let's go ahead and flip that over then.

18 MS. LEONARD: Your Honor, I move at this time to admit  
19 General Counsel's Exhibits 20 through 27, inclusive, as they  
20 have been marked by the witness. I can make copies for  
21 everyone on our next break.

22 JUDGE ROSAS: Any objection, voir dire?

23 MR. THOMAS: No objection.

24 JUDGE ROSAS: Okay. General Counsel's 20 through 27 are  
25 received.

1 **(General Counsel's Exhibits 20 through 27 received in**  
2 **evidence.)**

3 MS. LEONARD: I have no further questions for Mr. McNett  
4 at this time.

5 JUDGE ROSAS: Charging Party?

6 **CROSS-EXAMINATION**

7 Q. BY MS. WALKER: Mr. McNett, my name is Kim Walker, and  
8 I'm attorney for Petitioner/Union in this case. And I have a  
9 few questions for you.

10 MS. WALKER: Before I begin, Charging Party has not been  
11 privy to any kind of affidavits that were given to the Board  
12 in this case and would --

13 JUDGE ROSAS: You want to see them now?

14 MS. WALKER: -- request to review those at that time.

15 JUDGE ROSAS: Okay.

16 MS. LEONARD: There is one affidavit.

17 **JUDGE ROSAS: Okay. Off the record.**

18 **(Off the record from 9:22 a.m. to 9:30 a.m.)**

19 JUDGE ROSAS: Charging Party.

20 Q. BY MS. WALKER: Mr. McNett, did you do anything to  
21 prepare for your testimony today?

22 A. No.

23 Q. Did you speak with anyone?

24 A. No, ma'am.

25 Q. You testified, in response to questioning from AMS's

1 counsel, that you would give a talk to your crew, I guess,  
2 when you started a job. Do you recall that testimony?

3 A. I give a talk to my crew every morning, on a Monday  
4 morning, yes.

5 Q. Okay. Do you recall your testimony when you said that  
6 if the job is not done correctly, your butt is on the line?

7 A. No.

8 Q. You don't recall testifying to that yesterday?

9 A. I thought I said if they don't do the job correctly, we  
10 do not get paid for it twice.

11 Q. Okay. And in describing your personality, you don't  
12 recall saying that you would say that if, you know, the job  
13 is not done right, then my butt is on the line?

14 A. If they don't do it the way I tell them to do it, yes.

15 Q. Okay. What did you mean by that?

16 A. That if the stuff has to get tore down, I could get  
17 fired for not running it up properly, doing the job correctly  
18 and overseeing it.

19 Q. Has that ever occurred?

20 A. Stuff not being done properly, or got in trouble for not  
21 having the job done correctly?

22 Q. Both.

23 A. I've got in trouble for a job not being done correctly,  
24 yes.

25 Q. And what happened in that case?

1 A. It was a wall, radius wall at PTAC, which is in  
2 Sarasota, a radius wall that end up being a inverted radius.  
3 It ended up going the other way. And it cost us \$10,000 to  
4 have it fixed.

5 Q. When did that happen?

6 A. I couldn't tell you what year it was.

7 Q. Was it within the last 2 years?

8 A. No.

9 Q. Was it within the last 5 years?

10 A. Yes, ma'am, I think it was. I've done so many jobs,  
11 it's --

12 Q. And what were the consequences of --

13 A. I was just told to do a better job on keeping track  
14 because it's costing us money.

15 Q. Who told you that?

16 A. Marc Carney, I think the gentleman was.

17 Q. Were there any financial repercussions to that, while  
18 being inverted improperly?

19 A. It cost my boss money.

20 Q. Were there any financial implications to you?

21 A. No, ma'am.

22 Q. You testified yesterday about your union membership. Do  
23 you recall that testimony?

24 A. Yes, ma'am.

25 Q. How long were you in the Union?

1 A. I'm not sure. I think 5, a little over 5 years.

2 Q. And you testified that your dues were paid up through  
3 December of 2016; is that correct?

4 A. Six -- yes, ma'am.

5 Q. And when did you make that dues payment?

6 A. I want to say it was in June, I think. I usually pay 4  
7 to 6 months at a time.

8 Q. Have you ever held office in the Union?

9 A. No, ma'am.

10 Q. When is the last time you attended a union meeting at  
11 the union hall?

12 A. I've never attended one.

13 Q. You testified on direct examination that you  
14 participated in union benefits at AMS; is that correct?

15 A. I have union benefits, correct. And I work -- when I  
16 worked with AMS.

17 Q. Okay. And are you still participating in those union  
18 benefits?

19 A. No, ma'am.

20 Q. When did that stop?

21 A. I'm not sure. I think it was in November of 2016,  
22 somewhere in that area. It might have been in October.

23 Q. Okay. And was the participation stopped in health  
24 insurance benefits at that time or retirement plan benefits  
25 at that time?

1 A. I don't know. I think everything because they quit  
2 paying everything.

3 Q. Who quit paying everything?

4 A. AMS got out and stopped paying.

5 Q. Okay. So these union benefits that you participated in  
6 were funded through employer contributions from AMS to the  
7 plans; is that correct?

8 MR. THOMAS: Object to the form of question. Lack of  
9 predicate knowledge.

10 JUDGE ROSAS: I'll allow it.

11 You can answer, if you know.

12 THE WITNESS: All's I know is they take, the Union takes  
13 4 percent of money out of our check, or AMS takes the money  
14 out and pays it to the Union. And then there's so much an  
15 hour AMS pays. Every hour I work, they pay X amount of  
16 dollars, the way I understand it. And that's how it's  
17 worked. So AMS pays that part. But some of it's my money  
18 that gets paid in it, too.

19 Q. BY MS. WALKER: Okay. So there's a portion of your  
20 paycheck -- when you were participating in the union --

21 A. Correct.

22 Q. -- benefits, there was a portion of your paycheck that  
23 was deducted by AMS for union dues; is that correct?

24 A. Yes, ma'am.

25 Q. Okay. And that money, you understood and authorized to

1 be sent from AMS to the Union; is that correct?

2 A. Yes, ma'am.

3 Q. Okay. And then there was a certain amount of money that  
4 you understood AMS paid directly to the union pension fund or  
5 the union health fund for those benefits; is that correct?

6 A. I don't know who they paid it to, but they gave it to  
7 the Union. Yes, ma'am.

8 Q. Okay. But that was not money that came out of your  
9 check; is that correct?

10 A. That -- no.

11 Q. And those contributions from the Employer were based on  
12 hours that you worked at AMS, correct?

13 A. Yes, ma'am.

14 Q. And it was the Employer's responsibility to report those  
15 hours to the Union; is that correct?

16 A. Yes.

17 MR. THOMAS: Object to the form. Lack of predicate.

18 JUDGE ROSAS: If you know.

19 THE WITNESS: Yes, ma'am.

20 Q. BY MS. WALKER: Do you have health benefits now?

21 A. Yes, ma'am.

22 Q. Okay. And where do those benefits come from?

23 A. From AMS.

24 Q. And how long have you been receiving those benefits?

25 A. I'd have to look at my check. I've been paying for them

1 since -- since as soon as the Union stopped paying. I had  
2 them set me up with a plan through them that comes out of my  
3 check.

4 Q. And how does that work?

5 A. They take it out of my paycheck.

6 Q. Okay. And that's a deduction made off of your paycheck;  
7 is that correct?

8 A. Yes, ma'am.

9 Q. Did anyone stop you from paying union dues, or trick you  
10 to continue paying union dues at any time?

11 A. My wife made me stop paying union dues.

12 Q. Okay.

13 A. But no one's ever tricked me.

14 Q. Did anyone from the Union stop you from paying union  
15 dues?

16 A. No, ma'am.

17 Q. Okay. Did you receive any union election literature  
18 from AMS to vote against the Union?

19 A. To vote against the Union?

20 Q. Yes.

21 A. They said -- I don't know how to answer that one because  
22 I can't remember if it was exactly that they said vote no or  
23 they said what their case was.

24 Q. Okay. Let me refer you to some documents already in  
25 evidence. It's going to be in the General Counsel's pile.

1 JUDGE ROSAS: These will be in this pile.

2 THE WITNESS: I don't remember how they were worded.

3 Q. BY MS. WALKER: Okay. Well, I'll show you some  
4 documents and --

5 A. Okay.

6 Q. -- see if you might remember this. So in looking at  
7 what's been marked as GC Exhibit 7(a) through (m) --

8 A. Okay.

9 Q. Okay. Do you recall receiving what's been marked as  
10 General Counsel Exhibit 7(a)?

11 A. 7(a), yeah. Yes, ma'am.

12 Q. Okay. You received that from AMS?

13 A. Yes, ma'am.

14 Q. Okay. And let's flip to the next one, General Counsel  
15 Exhibit 7(b). Did you receive that from AMS?

16 A. This one, I do not remember if I did or not.

17 Q. Okay. All right, and then looking at General Counsel  
18 Exhibit (c), do you recall receiving that?

19 A. No, ma'am. I do not.

20 Q. Going forward, at General Counsel Exhibit 7(d) --

21 A. Yes, ma'am.

22 Q. You received General Counsel's Exhibit 7(d) from AMS?

23 A. Yes, ma'am.

24 Q. How did you get this literature, both 7(d) and 7(a); did  
25 that come in your paycheck?

1 A. Yes, ma'am.

2 Q. And in looking at General Counsel Exhibit 7(e), did you  
3 receive that?

4 MR. THOMAS: Your Honor, before the witness answers the  
5 question, I'd like to object to this line of questioning. At  
6 one point, Mr. McNett's ballot was challenged by the Union,  
7 and the Employer stipulated that ballot would not be counted  
8 in the election, so I'm not sure really the relevance to any  
9 of the issues that are currently pending before Your Honor.

10 MS. WALKER: Your Honor --

11 JUDGE ROSAS: What's it related to with respect to the  
12 scope --

13 MS. WALKER: It's related to --

14 JUDGE ROSAS: -- of the direct examination?

15 MS. WALKER: It's related to the questioning from  
16 Respondent as to what he received of the Union, and the  
17 argument that they've tried to make that there's some kind of  
18 union animus on the -- or employer animus on the part of the  
19 Union.

20 JUDGE ROSAS: Hold on. Let's make sure, because you  
21 used union and employer together in the same sentence.  
22 Repeat that.

23 MS. WALKER: I'm sorry. The Employer has asked  
24 questions of this witness and others about any kind of a way  
25 in which, or an implication that the Union would be somehow

1 talking poorly about the Employer and that that shows some  
2 kind of animus toward the Employer on the part of the Union.

3 The questions in this particular incident is meant to  
4 show that the employees received just as much information  
5 from the Employer to show union animus on the part of the  
6 Employer as the Union sent out.

7 JUDGE ROSAS: I see that line of questioning. It's kind  
8 of the converse of it. It's in evidence. I don't want to  
9 dwell too much on this, so let's just get through all of  
10 the -- overruled. Let's get through each of the exhibits  
11 quickly.

12 MS. WALKER: Fair enough.

13 Q. BY MS. WALKER: Mr. McNett, we could do this a little  
14 bit quicker. Why don't you look through all of General  
15 Counsel Exhibit 7, and just let me know which one of these  
16 that you received from the Employer.

17 A. Which one did we stop on?

18 Q. We stopped at (d).

19 A. Then (e), (f), only one left, (i). Is this one all one,  
20 the very last one? The 7(m), is that all three pages? Is  
21 that --

22 Q. I believe so. Yes.

23 A. Yes, ma'am. I received that one.

24 Q. Okay. And --

25 JUDGE ROSAS: Let's just say -- let me just put

1 something on the record, all right, so we don't need to  
2 belabor it too much with witnesses. But there is flyers in  
3 evidence that, what the Company sent out that was allegedly  
4 anti-union, that the Charging Party believes was  
5 objectionable conduct prior to the election; is that correct?

6 MS. WALKER: I don't --

7 JUDGE ROSAS: Is that one of your objections?

8 MS. WALKER: That is not one of our objections, Your  
9 Honor.

10 JUDGE ROSAS: That is not one of your objections? All  
11 right. So let's look at the complaint before we belabor this  
12 too much more. What are the flyers relevant to, just the  
13 animus element?

14 MS. WALKER: Just the animus. Yes, Your Honor.

15 JUDGE ROSAS: And with respect to the discharges?

16 MS. WALKER: With respect to the discharges, yes.

17 JUDGE ROSAS: And what, if anything, else?

18 MS. WALKER: Any -- I think that that would be it,  
19 primarily.

20 JUDGE ROSAS: Okay. So to the extent that there are  
21 flyers from the Union that were sent to employees that the  
22 Company is going to allege provide context for your  
23 statements, that will all be considered because --

24 MR. THOMAS: Yes, Judge.

25 JUDGE ROSAS: -- in an 8(a)(1) analysis, obviously, we

1 look at everything. We look at the context, at the  
2 situation, the circumstances in which statements were made.  
3 Obviously, oftentimes we're looking at them in person-to-  
4 person, you know, interactions. But in the context of mailed  
5 communications, we'll put everything together, and we'll look  
6 at it. And we'll consider obviously your contention, and  
7 Respondent's contention that something may not have been  
8 coercive because it was related to something else.

9 So it'll be a matter of matching documentation. I don't  
10 think there's any dispute that people are getting union  
11 mailings, and people are getting company mailings. So let's  
12 try to minimize -- I mean, if there's no question that these  
13 things went out on both sides.

14 MS. WALKER: Yes, Your Honor.

15 JUDGE ROSAS: All right. So we can kind of minimize --

16 MS. WALKER: We can --

17 JUDGE ROSAS: -- that from here on out.

18 MR. THOMAS: Sure. As long as this --

19 MS. WALKER: Yes.

20 MR. THOMAS: -- counsel agrees that the content of the  
21 mailings do not themselves constitute a violation of the Act,  
22 then we can move forward on that basis.

23 MS. WALKER: That has not been challenged.

24 JUDGE ROSAS: You don't want to mention that too much,  
25 so that they move to amend the pleadings throughout the

1 hearing --

2 MR. THOMAS: That's right.

3 JUDGE ROSAS: -- to conform to the proof. So let's move  
4 on.

5 MS. WALKER: Yes, Your Honor.

6 Q. BY MS. WALKER: Other than posting the election notice  
7 at the jobsite, did you do anything more on behalf of the  
8 Employer during the election?

9 A. No, ma'am.

10 Q. Did you make any calls, telephone calls to any employees  
11 during the election?

12 A. Yes, ma'am.

13 Q. Okay. And did you do that on your own accord, or did  
14 someone ask you to call those employees?

15 A. I did it on my own.

16 Q. Okay. You testified earlier that you have your OSHA 30  
17 certification; do you recall that testimony?

18 A. Yes, ma'am.

19 Q. And have you served as a safety coordinator on an AMS  
20 jobsite?

21 A. No, ma'am. That's all I -- I think it's in my job title  
22 as a foreman to oversee that part.

23 Q. Is it the practice of AMS to put a, or designate someone  
24 as a safety coordinator on a jobsite, to be there on a  
25 regular basis, if needed?

1 A. If needed, yes.

2 Q. Okay. And on the times when a safety coordinator from,  
3 let's say, the safety department, is not assigned to that  
4 jobsite, would you be the person responsible on that jobsite  
5 to fulfill that role?

6 A. Yes, ma'am.

7 Q. And that would be in your position as a superintendent,  
8 correct?

9 A. Yes, ma'am.

10 Q. Were you serving in that position at the University of  
11 Tampa job?

12 A. Yes, ma'am.

13 Q. Okay. Let me refer you now to what's been marked as GC  
14 Exhibit 5. And I will show you what it looks like in just a  
15 minute.

16 JUDGE ROSAS: You can pull to the tab.

17 Q. BY MS. WALKER: It looks like this, Mr. McNett.

18 A. Is it in this pile, or this one?

19 JUDGE ROSAS: Yeah, yeah, yeah.

20 THE WITNESS: Oh, okay.

21 JUDGE ROSAS: This pile.

22 MS. WALKER: The pile that you -- yes.

23 THE WITNESS: Oh, I turned them over.

24 JUDGE ROSAS: Yeah.

25 THE WITNESS: I'm thinking --

1 MS. WALKER: Yes, sir.

2 THE WITNESS: -- I only got 7 through 8. Okay. Okay.

3 Q. BY MS. WALKER: Okay. And I'm referring you to General  
4 Counsel's Exhibit 5. When you have been acting as the safety  
5 coordinator on a job, have you ever written up a notice, an  
6 employee warning notice like the one in GC Exhibit 5?

7 A. Yes, I have.

8 Q. Okay.

9 A. Did you say at University of Tampa or any AMS job?

10 Q. Just have you -- when you've been acting as the  
11 safety --

12 A. Yes.

13 Q. -- coordinator. Have you --

14 A. Yes, ma'am.

15 Q. Okay. Let's make sure it's clear for the record. Let  
16 me ask the question, and then answer. So when you function  
17 in the capacity as the safety coordinator on the jobsite, you  
18 have written up an employee warning notice like the one in GC  
19 Exhibit 5?

20 A. Yes, ma'am.

21 Q. And I thought you testified yesterday, and you can  
22 correct me if I'm wrong, but I thought you had testified  
23 yesterday that you had made some complaints about the union  
24 insurance; is that correct?

25 A. No, ma'am.

1 Q. Okay. You never complained to either AMS or the Union  
2 about your union insurance benefits?

3 A. One time I did to Mike on the day we were out there. He  
4 was out to the job.

5 Q. Okay.

6 A. They were -- my doctor was fixing to eliminate United  
7 Health Works as of June 1st or July 1st. And with my  
8 diabetes and my heart, I did not want to have to change  
9 doctors because I was happy with the two doctors I got. And  
10 right up to day one, or to the last day, they finally  
11 settled. But I brought it up, and he said he didn't know  
12 there was any complaints with Doctors Hospital and Lakewood  
13 Ranch with that company, and he would look into it.

14 Q. And did you also at times need to contact the customer  
15 service or someone, to talk about insurance issues like that?

16 A. My wife would call. I wouldn't.

17 Q. Okay. Do you speak Spanish?

18 A. Very little. I know the bad words and a few other  
19 things, but --

20 Q. Do you have Spanish-only speakers on your crews?

21 A. No, ma'am.

22 Q. Okay. In your position as the foreman or superintendent  
23 over the University of Tampa job, could you terminate  
24 employees?

25 A. Yes, ma'am.

1 Q. Was fall protection training conducted on the UT  
2 jobsite?

3 A. No, ma'am.

4 Q. I believe you testified, in questions from Respondent's  
5 counsel, that you had attended some safety training by EWI on  
6 May 16th; is that correct?

7 A. Yes. They had one, I think it was every Monday morning  
8 at 7 o'clock. They had a jobsite -- everyone on the jobsite  
9 had to go to it before anyone could go to work.

10 Q. And that was superintendents, employees --

11 A. Everybody.

12 Q. -- everyone; is that correct?

13 A. Uh-huh. And we had to sign in and -- just like we do  
14 for ours.

15 Q. How long did that training last?

16 A. Probably 10 minutes, 15 minutes at the most.

17 Q. And then on that day, you followed it on -- or on any  
18 Monday, you would follow it with one of the toolbox talks; is  
19 that correct?

20 A. Yes, ma'am.

21 Q. You testified in earlier testimony that, at some point,  
22 on May 16th, you contacted Alek or Mr. -- I'm sorry,  
23 Mr. Feliz, about two employees that you had -- who you had  
24 identified as being improperly tied off; is that correct?

25 A. Yes, ma'am.

1 Q. And I believe you also testified that, in that  
2 conversation, he told you that if they had signed the book,  
3 they would be fired; is that correct?

4 A. I don't know if it was fired or dismissed, but yes,  
5 ma'am.

6 Q. Okay. And do you know what book he was talking about?

7 A. We have an AHA book that they deal with the jobsites,  
8 with people when they get their training and then have them  
9 sign it so we have proof that they were trained.

10 Q. Okay. And when Mr. Ramirez arrived on site, did he have  
11 that book with him?

12 A. Yes, ma'am.

13 Q. All right. I'm going to have you look again at a --  
14 this is going to be a Respondent's exhibit, so this is in the  
15 binder.

16 JUDGE ROSAS: Right here.

17 Q. BY MS. WALKER: And if you will look at Respondent's  
18 Exhibit 7, do you recognize this document?

19 A. Yes, ma'am.

20 Q. Okay. And aside from the references to the Westshore  
21 Yacht Club, was there a similar document like this for the  
22 University of Tampa job?

23 A. No, ma'am, not that was given to me.

24 Q. You testified earlier that, I believe it was at the  
25 Bethune-Cookman project, there were some more stringent

1 safety standards set by the general contractor; is that  
2 correct?

3 A. Yes, ma'am.

4 Q. And as the superintendent, did you have direct and  
5 regular contact with the general contractor on that job?

6 A. Yes, ma'am.

7 Q. Does AMS follow the requirements of the general  
8 contractor without question?

9 A. Yes, ma'am.

10 Q. And if the general contractor saw a safety violation by  
11 an AMS employee, would AMS dispute that violation?

12 MR. THOMAS: Objection. Calls for speculation.

13 JUDGE ROSAS: Hold on.

14 MS. WALKER: I can lay some foundation.

15 JUDGE ROSAS: Yeah, let's take it into the actual facts.

16 MS. WALKER: Sure.

17 Q. BY MS. WALKER: Have you -- has a general contractor  
18 ever told you that an employee was found in violation of a  
19 safety regulation?

20 A. Yes, ma'am.

21 Q. Okay. And with that knowledge, did you take action on  
22 the safety violation?

23 A. Depends on what it was.

24 Q. So there would be a time, if there was a safety  
25 violation, that you would not take action on?

1 A. Yes, ma'am.

2 Q. What safety violations would you not take action on?

3 A. That they didn't have gloves in, earplug in, one earplug  
4 hanging off, they have their dust mask on, and didn't have  
5 both straps. They had one strap, and we'd explain to them  
6 what to do and teach them how to do it properly.

7 Q. If it was a safety violation like not wearing fall  
8 protection equipment, would you take action on that?

9 A. We would go through their channels and do what they told  
10 us to do, what they had set up, because I think on their job,  
11 after two write-ups, the third one, the superintendent got  
12 sent home.

13 Q. Are the requirements set by the general contractor on a  
14 job the minimum requirements that AMS has to meet?

15 A. Sometimes we go over what they have. We have better  
16 stringents, but pretty much, I don't know, I would say 70  
17 percent of the contractors we deal with now are more  
18 stringent than ours.

19 Q. You gave some testimony earlier about union  
20 representatives' access to AMS jobsites; do you recall that?

21 A. Yes, I do.

22 Q. And has the access policy, as you described it in your  
23 earlier testimony, has that changed, as we sit here today?

24 A. Not that I know of.

25 Q. So the union access to an AMS jobsite and its employees

1 is the same, as we sit here today, as it was in May 2016?

2 A. Yes, ma'am.

3 Q. Was May 16th the first time you observed someone tied  
4 off incorrectly as opposed to not tied off at all?

5 A. Is that the -- on the University of Tampa job?

6 Q. Yes.

7 A. Or any other job?

8 Q. University of -- any other job.

9 A. I've seen other people tied off incorrectly or not tied  
10 off before.

11 Q. Okay. You testified earlier about a date that had to be  
12 hit for completion on the Bethune-Cookman job; do you recall  
13 that?

14 A. Yes, ma'am.

15 Q. And what date was that?

16 A. April 8th.

17 Q. Okay. What are the consequences of a termination for  
18 cause at AMS?

19 A. What's the what?

20 Q. What are the consequences of a termination for cause at  
21 AMS?

22 A. What's the consequences? You lose your job usually.

23 Q. Can the employee be rehired?

24 A. Yes. I would think so.

25 Q. Have you, in fact, rehired individuals that have been

1 discharged for cause?

2 A. I have not, but other people have.

3 Q. If an employee is discharged for cause at AMS, will AMS  
4 challenge that employee's unemployment compensation in  
5 Florida?

6 A. I think they do. I don't -- I have no part of that. I  
7 don't deal with any of that.

8 Q. If an employee voluntarily quits at AMS, can they be  
9 rehired or recalled?

10 A. Yes, ma'am.

11 Q. Have you ever told an employee who either voluntarily  
12 quit or was discharged for cause that he or she could apply  
13 for unemployment compensation benefits?

14 A. Yes, ma'am.

15 Q. Okay. There were some documents admitted into evidence  
16 yesterday. It's Respondent's 27. And you can look at those  
17 if you need to, but I'm mainly just going to ask you some  
18 questions.

19 A. Okay.

20 Q. Okay. And in looking at page 1 of Respondent's 27, did  
21 Mr. Wrench give a reason for quitting that is not included in  
22 Respondent's 27, page 1?

23 A. He got another job.

24 Q. And who prepared this form?

25 A. This form, I'm not sure, but usually it's Yolanda.

1 Q. Okay. And how does that process work? She prepares the  
2 form, and then she sends it to you to sign, or is it prepared  
3 in your presence and you sign at that time?

4 A. Most of them are done in front of me, and I sign. I  
5 think there was one or two, and the one yesterday was  
6 prepared, then I signed it.

7 Q. Okay. And on -- or most of the time when you are  
8 assigned to a jobsite, are the people that are preparing  
9 these forms located at the Sarasota office?

10 A. Yes, ma'am.

11 Q. Okay. And so would you -- how do you usually exchange  
12 information between the Sarasota office and the jobsite?

13 A. Through texts, telephone calls, pictures.

14 Q. So you would have received a text of this, or would  
15 you --

16 A. No. I would have went to the -- sometimes I go pick up  
17 the payroll in the office, and that's when we take care of  
18 it.

19 Q. Okay. Okay. And did Robert Baker give you a reason for  
20 his quitting, as identified on page 2 --

21 A. No.

22 Q. -- of Respondent's 27?

23 A. No, ma'am.

24 Q. Okay. And did you prepare page 2, the notice on page 2?

25 A. Yes, ma'am. I didn't do the writing. I signed it

1 because he was one of the ones that just quit, didn't show  
2 up.

3 Q. And did you sign it on the same date that the document  
4 is dated?

5 A. Yes, ma'am.

6 Q. Were you Mr. Pietsch's foreman?

7 A. Yes, ma'am.

8 Q. Okay. Do you have a supervisor over you?

9 A. Yes, ma'am.

10 Q. And who is that?

11 A. Bob Dutton.

12 Q. Okay. So that would be the reason why the foreman name  
13 is written as Bob Dutton, but you've signed as foreman; is  
14 that correct?

15 A. Yes, ma'am. Because he worked for Bob on Phase 2 -- or  
16 Phase 1, and then he come over, was working for me on Phase  
17 2. And then Bob overseen -- when Phase 1 was done, he  
18 overseen Phase 2. He basically took the headaches away from  
19 me on a lot of things.

20 Q. Okay.

21 A. So I didn't have to do paperwork for HP.

22 Q. Okay. And is the same true for this form as the others;  
23 it was completed by someone in --

24 A. In the office.

25 Q. -- HR? Has Jacob Barlow worked at AMS since his

1 voluntary quit on Respondent's Exhibit 27, page 4?

2 A. No, ma'am. He's still working at the same job, as of a  
3 few weeks -- a month ago, when he left us. Because I call  
4 him and try to get him to come back.

5 Q. Is Mr. Barlow one of those employees that's worked off  
6 and on for AMS over a long period of time?

7 A. Yes, ma'am.

8 MS. WALKER: Your Honor, I've got some exhibits that  
9 we're going to introduce into evidence.

10 JUDGE ROSAS: You can close that book up and put it up  
11 here so you have room.

12 THE WITNESS: How do you keep track of all this?

13 JUDGE ROSAS: Shuffle the -- okay.

14 **(Charging Party's Exhibit 26(a) through (e) marked for**  
15 **identification.)**

16 Q. BY MS. WALKER: Okay. Mr. McNett, I'm handing you what  
17 we've identified as CP-26(a) through (e). And they're also  
18 Bates-stamped on each individual page for further  
19 identification. And I'll represent to you that these were  
20 received from AMS in response to the Petitioner's subpoena in  
21 this case. In looking --

22 JUDGE ROSAS: Before you continue --

23 MS. WALKER: Yes.

24 JUDGE ROSAS: -- and read from it, or seek to read from  
25 it, is there going to be any objection -- are you going to be

1 offering this into evidence?

2 MS. WALKER: I would like to, but I didn't know if I  
3 needed to get some foundation from --

4 JUDGE ROSAS: Well --

5 MS. WALKER: -- him or not, or if we could stipulate to  
6 that.

7 JUDGE ROSAS: Can you agree on its authenticity?

8 MR. THOMAS: We can, Your Honor. These are documents  
9 produced --

10 JUDGE ROSAS: Okay.

11 MR. THOMAS: -- pursuant to the Union's subpoena, so we  
12 will stipulate that these are, in fact, documents --

13 JUDGE ROSAS: Okay. So all that's left is any basis for  
14 an objection. Do you have any objection?

15 MR. THOMAS: At this point, it depends on the question  
16 asked to the witness. But again, we don't have objection to  
17 the authenticity of the documents.

18 JUDGE ROSAS: Well, she just --

19 MS. WALKER: Can we --

20 JUDGE ROSAS: Apparently she's established the  
21 foundation for its presentation to the witness, which is that  
22 it's been provided by you guys. So it's relating to  
23 obviously Jacob Barlow. And again, it's my habit to try to  
24 nip these things in the bud before there's things that are  
25 read from documents that may not go into evidence.

1 So you're going to be offering it?

2 MS. WALKER: Petitioner would seek -- yes, Your Honor.  
3 We will offer it into evidence.

4 JUDGE ROSAS: And you say that it's relevant to your  
5 previous questioning with respect to Mr. Barlow?

6 MS. WALKER: Yes.

7 JUDGE ROSAS: As to --

8 MS. WALKER: As to his employment off --

9 JUDGE ROSAS: As to the circumstances by which he  
10 separated and what his situation is now and his history?

11 MS. WALKER: Yes, Your Honor.

12 JUDGE ROSAS: So --

13 MR. THOMAS: We don't object to its admission to  
14 evidence.

15 JUDGE ROSAS: Okay. So Charging Party 26(a) through (e)  
16 are received.

17 **(Charging Party's Exhibit 26(a) through 26(e) received in**  
18 **evidence.)**

19 MS. WALKER: Okay. Thank you.

20 Q. BY MS. WALKER: And like Mr. Barlow, has Jeremy Clark  
21 also worked off and on for AMS over the years?

22 A. The first time I ever met him was at Bethune-Cookman, so  
23 that's the only job I know him from.

24 Q. Okay. Was he a good employee?

25 A. Yes, ma'am. He was.

1 Q. And in regards to Dustin Hickey, had Mr. Hickey  
2 voluntarily quit and been rehired by you at the Bethune-  
3 Cookman college project?

4 A. Yes, ma'am. I rehired him.

5 Q. Are you currently running a project for AMS?

6 A. Yes, ma'am.

7 Q. What project is that?

8 A. It's in Orlando. It's Millennium Storage, Millennium  
9 Park Storage.

10 Q. Is Forrest Greenlee currently working for AMS?

11 A. No, ma'am.

12 Q. Has he worked for AMS, that you know of, since he  
13 voluntarily quit, as identified in Respondent's Exhibit  
14 27(7)?

15 A. That, I do not know. I'm not on that job. I know they  
16 asked me a week ago if I could put him on. He was looking to  
17 come back from wherever he was working at.

18 Q. Okay. Did AMS run a job referred to as SpringHill-Lake  
19 Buena Vista?

20 A. Yeah. They're over there working now.

21 Q. Okay. And who is the superintendent in charge of that  
22 job?

23 A. Bob Dutton.

24 Q. Okay. When you were superintendent for the Bethune-  
25 Cookman project, did AMS pay travel or lodging expenses for

1 employees from out of town?

2 A. Yes, ma'am.

3 Q. And when did that start?

4 A. It was going on when I got there in middle of May of  
5 2015. So I couldn't tell you the exact start date.

6 Q. And I believe you testified earlier that your hit date  
7 on that project was April 8th of 2016; is that correct?

8 A. For all the brick to --

9 Q. For the entire project.

10 A. For all the brick to be laid.

11 Q. Okay. And did the payment for lodging and travel  
12 expenses continue from the time you arrived in May of 2015  
13 through April of 2016?

14 A. That I know of, the people that were still receiving it  
15 that were there, yes, they were still getting it. Nobody  
16 come to me and said they weren't getting it.

17 Q. And you weren't involved with telling any employees that  
18 AMS would no longer be paying for lodging or travel expenses;  
19 is that correct?

20 A. No, ma'am.

21 Q. Did Mark France work for you?

22 A. Yes, ma'am.

23 Q. Okay. What job was that?

24 A. Bethune-Cookman Phase 2. He was a -- come down from --  
25 he was working up at the University of Notre Dame, is what he

1 told me. And he came down here and was working and said he  
2 missed his wife and had to go home.

3 Q. Where was home for him, do you know?

4 A. Up wherever University of Notre Dame is, one of the  
5 towns around Indianapolis. I don't know.

6 Q. Okay. But he had certainly traveled a far distance for  
7 this job, correct?

8 A. Yes, because we were putting him in a hotel and --

9 Q. Not that Florida is a bad place to work, correct?

10 A. It may get cold, but it don't get as cold as it does up  
11 north.

12 Q. Has George Reed worked for AMS off and on through the  
13 years?

14 A. George Reed has worked off and on since '98 because I  
15 remember when he started.

16 Q. Is he working for AMS now?

17 A. Nope. He quit.

18 Q. When did he quit?

19 A. I don't know the exact dates, but I know why he quit.  
20 He told me and --

21 Q. Okay.

22 A. -- he went to work. Should I tell you why he -- where  
23 he went and all that or?

24 Q. No. That's okay. Your -- Respondent can ask, if  
25 they're curious.

1 A. Okay.

2 Q. Did Robert Harvey work for you on the Bethune-Cookman  
3 job?

4 A. Yes, ma'am.

5 Q. Is he a traveler?

6 A. I think so. I think he's from Missouri or something,  
7 Louisiana, or -- I'm not positive.

8 Q. Does John Smith work for AMS now?

9 A. I think he's back working with us.

10 Q. Where -- do you know what project he's working on?

11 A. I think he's over with SpringHill with Bob. I'm not  
12 positive. The name has come up from George a couple of times  
13 so -- I don't go to it, and I don't see his roster.

14 Q. And when you say George, are you referring to George  
15 Reed?

16 A. Yes, ma'am.

17 Q. Are you familiar with the term "putting an employee on  
18 the couch"?

19 A. Yep.

20 Q. And what does that mean?

21 A. Laying them off. Or giving them the day off because we  
22 have no work. You say, you're going to be on the couch  
23 tomorrow because we have no work.

24 Q. And when projects are being worked, what is the general  
25 workday shift for the job?

1 A. Usually 7 to 3:30, but some do change.

2 MS. WALKER: Thank you, Mr. McNett. That's all I have.

3 JUDGE ROSAS: Any redirect?

4 MR. THOMAS: Just a little bit, Your Honor.

5 **REDIRECT EXAMINATION**

6 Q. BY MR. THOMAS: Mr. McNett, I want to clarify something  
7 on the record about the University of Tampa job and the  
8 equipment that was used. If you would, get those photographs  
9 back in front of you of the different pieces of equipment.

10 If you would, please turn to Number 24, which you  
11 testified was the retractor.

12 A. Yes, sir.

13 Q. Now, Mr. McNett, when you testified that masons working  
14 at the University of Tampa were using the retractor, were you  
15 referring to masons working inside, working outside, or both?

16 A. They were -- wherever they were working, if they had a  
17 fall of over 6 feet, they were using a retractor.

18 Q. What if a mason was working outside and had a wall in  
19 front of him and was railed in? Is that a situation where  
20 the retractor would be used?

21 A. He would not be using the retractor.

22 Q. If you would turn to the binder right there in front of  
23 you that's on your right. If you would please turn to tab  
24 number 12. Can you tell us what that is?

25 A. It's a letter we got from the Union.

1 Q. Is that something you received in the mail?

2 A. Yes, sir.

3 MR. THOMAS: We would move the admission of Respondent's  
4 Exhibit Number 12 into evidence.

5 JUDGE ROSAS: Respondent's 12?

6 MR. THOMAS: And, Your Honor, just to make the record  
7 complete, we've got the employer mailings that Mr. McNett  
8 said he received. And I'm sure we've got the union mailings  
9 that he received as well.

10 MS. WALKER: Just some voir dire, Your Honor, quickly.

11 **VOIR DIRE EXAMINATION**

12 Q. BY MS. WALKER: Mr. McNett, you received this in the  
13 mail; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. And did it come in an envelope with the  
16 Union's --

17 A. Stamp up --

18 Q. -- stamp on it?

19 A. Yes, ma'am.

20 MS. WALKER: Okay. Petitioner has no objection.

21 MS. LEONARD: And no objection from the General Counsel.

22 JUDGE ROSAS: Respondent's 12 is received.

23 **(Respondent's Exhibit 12 received in evidence.)**

24 **REDIRECT EXAMINATION (cont.)**

25 Q. BY MR. THOMAS: Mr. McNett, when a mason leaves a job

1 for any reason, do you communicate that to the AMS main  
2 office in Sarasota?

3 A. Usually.

4 Q. All right. And when you do communicate it, to whom do  
5 you communicate that?

6 A. It usually goes to Yolanda, and it's written on my time  
7 sheet, or text or phoned in when I -- she calls or I forget  
8 to write it down. She'll say, well, this person don't have  
9 no time, why? And then I'll tell her over the phone.

10 Q. If you'll take back -- if you'll take the binder back  
11 and turn to Respondent's Exhibit Number 27, are all these  
12 reason for leaving forms, documents that Yolanda presented to  
13 you?

14 A. Yes, sir.

15 Q. And she presented it -- did she present them to you  
16 after you had a conversation with her about the departures of  
17 these masons?

18 A. Yes, sir.

19 Q. Are the forms here that make up Respondent's 27 in  
20 evidence, are they true and accurate as to their contents?

21 A. Yes. But it doesn't say -- on a couple of them, it  
22 don't say who rode with who, with transportation, because a  
23 couple of them were, they went to other jobs, and some of  
24 them couldn't ride because one person drove them, and that's  
25 not written in them.

1 Q. Do these documents in Respondent's Exhibit 27 reflect  
2 what you told Yolanda over the phone?

3 A. Uh-huh.

4 Q. Is that a yes or a no, for the record?

5 A. Yes, sir.

6 Q. Mr. McNett, on the Bethune-Cookman job, in response to  
7 some questions from Union counsel, you testified about a  
8 April the 8th date. Were you still working at Bethune-  
9 Cookman on that job after April the 8th?

10 A. Yes, sir.

11 Q. After the April the 8th, was there still work being done  
12 by masons on that job?

13 A. Yes, sir.

14 Q. What work was being done?

15 A. On April 8th, the last brick was laid. There was  
16 scaffold still up. There was repairs on or these vents that  
17 come out of the laundry rooms where they were put at the --  
18 the people installed them at the wrong heights, were broke  
19 out. So we had to go back, cut the brick out, replace them.  
20 There was a couple stone -- there were stones that were  
21 broke, we had to go back and patch.

22 It's what they call punch-out. We still had some  
23 elevator fronts. And we were -- to get the last thing done,  
24 we still had -- 30 percent of the building still had scaffold  
25 built that we had to tear down. And we had to demobilize,

1 and that takes a long time.

2 Q. Was that work on a critical part of the schedule that  
3 AMS was expected to comply with?

4 A. Yes, sir.

5 Q. What would be the consequence if AMS didn't do that  
6 work?

7 A. If we didn't get it done by a certain time and get out  
8 of there, it was -- there was a \$25,000-a-day penalty for not  
9 completing on time, was what I was told by HP.

10 Q. If AMS hadn't done that work, would other trades have  
11 been delayed in their work?

12 A. Yes, sir.

13 Q. Mr. McNett, if you would look at some personnel records  
14 that you were provided by counsel for the Union, entered as  
15 Charging Party's Exhibit 26(a) through (e) in evidence, just  
16 looking from the first page to the last, it appears to be in  
17 alphabetical order. Jacob Barlow, Jeremy Clark, Dustin  
18 Hickey, Forrest Greenlee, and George Reed, Junior, are these  
19 all individuals that you supervised at Bethune-Cookman?

20 A. Yes, sir.

21 Q. If you will look -- and take your time, at each  
22 document, you can see where there's a -- looking at the  
23 bottom, reading from left to right, there's a date. And then  
24 it'll say, "VQ at BCU with Turbo." Please look at each  
25 document and see where it says that.

1 A. Yes, sir.

2 Q. Do you know what the abbreviation "VQ" means?

3 A. Voluntarily quit.

4 Q. Do these documents, comprising Charging Party's Exhibit  
5 23(a) through (e) in evidence, do they accurately reflect how  
6 these employees departed the Bethune-Cookman job on the dates  
7 indicated?

8 MS. WALKER: Objection to the extent it's asking and  
9 assuming facts that these -- well, object -- document speaks  
10 for itself.

11 JUDGE ROSAS: That's your objection?

12 MS. WALKER: Yes, Your Honor.

13 JUDGE ROSAS: I'll allow it. Overruled. He can answer.

14 THE WITNESS: So what was the question again?

15 Q. BY MR. THOMAS: Sure, Mr. McNett. I'm asking if the  
16 lines in each one of these documents that have a date, and  
17 then VQ at BCU with Turbo, do these documents accurately  
18 reflect how these employees departed the Bethune-Cookman job  
19 on the dates that are indicated?

20 A. They voluntarily quit. Yes, that's correct. But it  
21 doesn't say that they had other jobs.

22 MR. THOMAS: Fair enough. I don't have any further  
23 question for the witness.

24 JUDGE ROSAS: Okay. Any follow-up?

25 MS. LEONARD: I may have one question, Your Honor.

1 JUDGE ROSAS: Okay.

2 MS. WALKER: And I have one.

3 MS. LEONARD: Could we have a few minutes?

4 JUDGE ROSAS: Two minutes.

5 **(Off the record from 10:22 a.m. to 10:22 a.m.)**

6 **RECROSS-EXAMINATION**

7 Q. BY MS. WALKER: When you were still working at the  
8 Bethune-Cookman job after April 8th, did you still have a  
9 full crew?

10 A. No, ma'am.

11 Q. What size of a crew did you need at that point to do the  
12 punch list you described?

13 A. I do not remember how many I had. But it was a -- we  
14 didn't lay no one off. We sent some to different jobs,  
15 because I left at the end of April to go do another job, and  
16 that's when Bob stayed and finished.

17 MS. WALKER: Thank you. That's all I have, Your Honor.

18 JUDGE ROSAS: Any follow-up?

19 MR. THOMAS: No follow-up.

20 JUDGE ROSAS: Okay. Thank you, sir. You're excused.  
21 Please do not discuss your testimony with anyone until --

22 THE WITNESS: Just leave all this here, or do I take it?

23 JUDGE ROSAS: -- counsel advises you that the record in  
24 the case is closed. All right?

25 THE WITNESS: Okay.

1 JUDGE ROSAS: So don't talk to anybody about it.

2 THE WITNESS: Do I just leave all this here?

3 JUDGE ROSAS: Just leave everything. Thank you.

4 THE WITNESS: All right.

5 **(Witness excused.)**

6 JUDGE ROSAS: Thank you.

7 **All right, we'll take 5 minutes before your next**  
8 **witness.**

9 **(Off the record from 10:23 a.m. to 10:32 a.m.)**

10 JUDGE ROSAS: Sir, please raise your right hand.

11 (Whereupon,

12 **BRIAN CANFIELD**

13 was called as a witness by and on behalf of the Respondent  
14 and, after being first duly sworn, was examined and testified  
15 as follows:)

16 JUDGE ROSAS: All right, please have a seat. State and  
17 spell your name for the record.

18 THE WITNESS: Brian Canfield, B-r-i-a-n  
19 C-a-n-f-i-e-l-d.

20 MS. LEONARD: Your Honor, could the witness speak up a  
21 little, please?

22 JUDGE ROSAS: Yeah, yeah.

23 Restate your last -- respell your last name.

24 THE WITNESS: C-a-n-f-i-e-l-d.

25 JUDGE ROSAS: Okay. And provide us with an address.

1 THE WITNESS: 2893 Avon Court, Palm Harbor.

2 JUDGE ROSAS: Florida?

3 THE WITNESS: Yes.

4 JUDGE ROSAS: Okay.

5 **DIRECT EXAMINATION**

6 Q. BY MR. THOMAS: Good morning, Mr. Canfield.

7 A. Good morning.

8 Q. Mr. Canfield, are you presently employed?

9 A. Yes, sir.

10 Q. With whom are you presently employed?

11 A. Advanced Masonry.

12 Q. How long have you worked for Advanced Masonry?

13 A. Three and a half years.

14 Q. What is your current position?

15 A. Foreman.

16 Q. How long have you been a foreman with Advanced Masonry?

17 A. Three and a half years.

18 Q. Have you ever been a union member?

19 A. No, sir.

20 Q. As a foreman with AMS, have you ever had union masons on  
21 your crew?

22 A. Yes.

23 Q. Has that affected your management style at all?

24 A. No.

25 Q. Have you treated union members more strictly than

1 non-union members?

2 A. No.

3 Q. Have you treated union members more leniently than  
4 non-union members?

5 A. No.

6 Q. Does the Company have a policy or practice on when the  
7 Union can visit its jobsites and talk to the employees?

8 A. Yes.

9 Q. What is that policy or practice?

10 A. On the employees' own time, before, after, or at lunch.

11 Q. Do you know Mr. Mike Bontempo?

12 A. Yes.

13 Q. And who is Mr. Bontempo?

14 A. A union representative.

15 Q. Have you ever communicated to Mr. Bontempo that you were  
16 interested in joining the Union yourself?

17 A. Yes.

18 Q. What is it that you communicated to him?

19 A. I asked for some information, a brochure.

20 Q. Did Mr. Bontempo provide that brochure?

21 A. I would -- I received a brochure, but it didn't have  
22 enough information, I didn't feel like, to proceed.

23 Q. After receiving the brochure, did you decide -- make a  
24 decision on whether to join the Union?

25 A. I decided not to.

1 Q. Is there anything else that played into your decision on  
2 not to join?

3 A. No, sir.

4 Q. Has Mr. Bontempo ever visited jobsites where you were  
5 working as a foreman?

6 A. Yes.

7 Q. About how often would this happen?

8 A. Once a month, once every other month, maybe sometimes  
9 twice a month.

10 Q. All right. Did there come a time when you were the  
11 foreman on a job called the Hermitage?

12 A. Hermitage, yes.

13 Q. The Hermitage, thank you. Would you explain for the  
14 Judge what that job was and what AMS's work on the job was?

15 A. It was an eight-story, post-tensioned building. As far  
16 as -- what would you like for me to explain?

17 Q. Sure. What was the kind of work that AMS was doing?

18 A. We were building structure for the building, from floor  
19 to floor, 8-inch block, 12-inch block, 10-inch block, pumping  
20 concrete, strict safety, and kind of a high stress, very fast  
21 pace, keeping up with schedules and whatnot.

22 Q. Did you say where the Hermitage job was located?

23 A. It's St. Pete, 300 Central.

24 Q. Do you remember the time where AMS was doing work on  
25 that job and you were the foreman?

1 A. Yes.

2 Q. What were the dates?

3 A. I can't remember date for date. I'd have to look back  
4 in my paperwork.

5 Q. Fair enough. Let me ask you this question. Did you  
6 observe Mr. Bontempo coming onto the Hermitage jobsite?

7 A. Yes.

8 Q. Did you have an opportunity to interact with him when he  
9 did that?

10 A. A few times, yes.

11 Q. Would you describe those interactions?

12 A. He pretty much wanted to come up and, you know, say  
13 hello to the guys that were in the Union and talk to the guys  
14 who weren't in the Union about getting into the Union,  
15 passing out his brochures, and T-shirts and whatnot.

16 Q. When would Mr. Bontempo arrive out at the Hermitage  
17 jobsite?

18 A. I wouldn't say it was on any consistent time. It was, I  
19 guess, maybe when he had time to get by there. But a lot of  
20 times it was when the guys were still working, and I guess  
21 sometimes it was during lunch. But --

22 Q. When -- go ahead. Finish your answer.

23 A. I don't think there was any consistent, any kind of  
24 consistency to it as far as when he showed up.

25 Q. When Mr. Bontempo would arrive when the men were still

1 working, did you communicate with him at all?

2 A. Yes.

3 Q. What did you tell him?

4 A. That I would like for him to speak with the men when  
5 they were on break, lunch, before or after work.

6 Q. Do you know an individual named Johnny Wheeler?

7 A. Yes.

8 Q. Who is Mr. Wheeler?

9 A. One of the masons for the Company.

10 Q. Have you ever used Mr. Mason -- excuse me, Mr. Wheeler  
11 in a straw boss type of capacity?

12 A. No.

13 Q. Have you ever given Mr. Wheeler the authority to  
14 discipline or discharge employees?

15 A. No.

16 Q. Have you ever given Mr. Wheeler any kind of authority to  
17 run a jobsite or substitute for you as foreman?

18 A. No.

19 Q. Now, Mr. Canfield, are you aware of the date on which  
20 the notice of election was posted, informing masons that  
21 there would be an election to determine whether they would be  
22 represented by the Bricklayers Union?

23 A. Yes.

24 Q. Did you post that notice yourself?

25 A. Yes.

1 Q. Do you remember when, in time, that was?

2 A. February, March-ish.

3 Q. Was it before or after the time where you worked on the  
4 Hermitage job?

5 A. It was during the Hermitage.

6 Q. I want to take you to a particular day, and I want to  
7 take you to March the 20th -- excuse me, May the 24th, 2016.  
8 Do you remember what job you were working on, on that date?

9 A. I think I was between both. And since you say May, I  
10 said March. So it may have been April-May instead of  
11 February-March.

12 Q. When you say both, what jobs are you referring to there?

13 A. The Hermitage at St. Pete and the Holiday Inn Express in  
14 Saint -- in Seminole.

15 Q. You've explained for the Judge the nature of AMS's work  
16 on the Hermitage. What was the nature of AMS's work at the  
17 Holiday Inn?

18 A. We would go in, build the structure for the walls,  
19 leaving out windows, doors, whatnot, and then another  
20 contractor would come in and set hollow core on top of our  
21 walls, form pour, get everything ready to where we could put  
22 the next floor on.

23 Q. When you say the word "hollow core," what is that?

24 A. A big concrete panel that is pre-cut to fit, wall to  
25 wall.

1 Q. Did there come a time, on May the 24th, 2016, when  
2 Mr. Bontempo arrived at that jobsite?

3 A. Yes.

4 Q. All right. What can you tell us about that particular  
5 interaction?

6 A. That day, it was kind of late in the day, toward the end  
7 of the shift. And we were running a bit behind schedule, I  
8 think. When they set a hollow core date, you're pretty much  
9 stuck with it because the hollow core guys come from out of  
10 state most of the time. So when they get there, they're  
11 expected to set the crane up, do the picks, put the hollow  
12 core on, and be back out of there, so it comes back into the  
13 schedule again.

14 He came up towards the end of the shift, said hello. We  
15 shook hands or whatever. And he said he needed to speak with  
16 some of the guys. And I asked him if he could do it after  
17 work.

18 Q. Did Mr. Bontempo have a response?

19 A. He said that it would be short and quick, that he just  
20 needed to speak with them for a few minutes. And I asked him  
21 again, we need to do this after work because I'm behind  
22 schedule, and I need to get everything done that I can  
23 possibly get done.

24 Q. Did Mr. Bontempo have anyone with him at this time?

25 A. Yes.

1 Q. Who did he have with him?

2 A. I'm not sure of the gentleman's name, but I had never  
3 seen him before.

4 Q. Do you remember the precise time of day when this  
5 interaction happened?

6 A. It was sometime between 2 o'clock and 3:30.

7 Q. After you interacted with Mr. Bontempo, did you observe  
8 what he did?

9 A. Yes. I asked him to wait until after work, so him and  
10 the gentleman drove to the bottom of the parking lot, would  
11 be the south side of the job, and sat in the car until I  
12 released the guys at 3:30.

13 Q. Did any of the individuals who were with Mr. Bontempo  
14 subsequently behave in a way that caught your attention?

15 MS. LEONARD: Objection, Your Honor.

16 JUDGE ROSAS: Repeat that.

17 MR. THOMAS: Sure. If any of the individuals who were  
18 with Mr. Bontempo behaved in a way that caught the witness's  
19 attention.

20 JUDGE ROSAS: That's okay.

21 MS. WALKER: Object.

22 JUDGE ROSAS: Yeah, what's the basis?

23 MS. WALKER: The objection is it's a mental impression.  
24 It's not what he saw.

25 JUDGE ROSAS: Okay.

1 MS. LEONARD: And leading as well.

2 MR. THOMAS: Well, if he did --

3 JUDGE ROSAS: Similar to, you know, what, if anything  
4 unusual occurred, in that vein. Overruled.

5 You can answer.

6 THE WITNESS: Yes.

7 Q. BY MR. THOMAS: What was it that you saw?

8 A. The guy that I hadn't met before, as he got out of the  
9 car, he had a shirt on over the shirt -- like he was covering  
10 up a shirt. So he took the other shirt off and had the union  
11 representative shirt on and approached Lonnie McDonald in  
12 kind of an aggressive way, as far as he was -- fought --

13 MS. WALKER: Objection to the extent it characterizes  
14 the behavior of -- strike that. I'll ask him on cross.

15 THE WITNESS: He was walking behind Lonnie McDonald. It  
16 was hot. Everybody was tired. Lonnie was -- excuse me,  
17 already a part of the Union. And he let the gentleman know,  
18 I'm already with the Union. I'm ready to go home. I don't  
19 have time for this.

20 And the guy kind of persisted. And Lonnie persisted to  
21 let him know that he was unhappy with the Union.

22 MS. WALKER: Objection to the extent that it's hearsay  
23 testimony.

24 JUDGE ROSAS: Is Mr. McDonald going to be testifying?

25 MR. THOMAS: No, sir.

1 JUDGE ROSAS: All right. That's stricken, to the extent  
2 of the content of any alleged statements by Mr. McDonald.

3 MR. THOMAS: Sure.

4 Q. BY MR. THOMAS: Mr. Canfield, you can continue  
5 testifying. Just don't tell us, don't testify as to what  
6 Mr. McDonald himself said.

7 A. Okay. Wow. Okay. That's kind of hard to do.

8 JUDGE ROSAS: After Mr. McDonald said something, what,  
9 if anything, happened?

10 THE WITNESS: They began speaking with the other guys.

11 JUDGE ROSAS: They being Mr. Bontempo and the other  
12 gentleman?

13 THE WITNESS: Yes, sir. Yes, sir.

14 Q. BY MR. THOMAS: All right. Did you communicate  
15 something to the other gentleman?

16 A. I asked him not to harass the employees.

17 Q. Mr. Canfield, after the notice of election that you  
18 posted went up, did you at all change your demeanor or  
19 communications to Mr. Bontempo as compared to before?

20 A. After that day?

21 Q. Before the -- after -- looking at the date you posted  
22 the notice, did your manner of interacting with Mr. Bontempo  
23 change at all?

24 A. Oh no.

25 Q. Did you ever direct Johnny Wheeler to expel Mr. Bontempo

1 from a jobsite?

2 A. No. Johnny Wheeler is a mason. He has no authority.

3 MR. THOMAS: Nothing further.

4 JUDGE ROSAS: Cross-examination?

5 MS. LEONARD: Nothing from the General Counsel, Your  
6 Honor.

7 JUDGE ROSAS: Charging Party?

8 MS. WALKER: Does General Counsel have any affidavit  
9 testimony from this witness?

10 MS. LEONARD: Your Honor, there is one two-page  
11 affidavit.

12 **JUDGE ROSAS: All right. Let's go off the record for a**  
13 **minute.**

14 **(Off the record from 10:44 a.m. to 10:51 a.m.)**

15 **CROSS-EXAMINATION**

16 Q. BY MS. WALKER: Mr. Canfield, my name is Kim Walker.  
17 I'm attorney for Petitioner/Union in this case. I have a few  
18 questions for you. You testified that Mr. Bontempo came to  
19 the Hermitage jobsite; is that correct?

20 A. Yes, ma'am.

21 Q. And you testified that he came to that jobsite  
22 frequently; is that correct?

23 A. More than twice.

24 Q. Was the policy about union access at AMS in place before  
25 you started working for AMS?

1 MR. THOMAS: Objection. Calls for speculation.

2 JUDGE ROSAS: Sustained.

3 Q. BY MS. WALKER: When you got to AMS, did anyone tell you  
4 what the policy was on union access at jobsites?

5 A. Yes. It's all in the handbook.

6 Q. It's in the handbook?

7 A. I'm sure it is, ma'am.

8 Q. Okay. Is -- do you know that it's in the handbook?

9 A. When I first had a union guy come on the jobsite, I  
10 asked my boss, and he said that the policy was before or  
11 after, break or lunch. We got to keep the guys working.  
12 Masonry is a production-oriented --

13 Q. Who is your boss?

14 A. Marc Carney.

15 Q. And when was the first time you had a union  
16 representative come to your jobsite after you started working  
17 as a superintendent for AMS?

18 A. It wasn't very long after. I think it was on the first  
19 job, as a matter of fact.

20 Q. And what was that first job?

21 A. Shops at Largo.

22 Q. And when did you --

23 MR. THOMAS: I'm sorry, Ms. Walker. Mr. Canfield, if  
24 you would please raise your voice a little bit when you're  
25 answering the questions. I want to make sure that we pick

1 up. That recorder, that microphone's recording your voice,  
2 and I want to make sure we get a good recording.

3 THE WITNESS: Shops at Largo.

4 Q. BY MS. WALKER: Okay. And when did you work the Shops  
5 at Largo project?

6 A. Approximately 3½ years ago.

7 Q. Who was the union representative that came onto the job  
8 at that time?

9 A. Mike Bontempo is the only representative that I had ever  
10 really spoke with.

11 Q. And did you already know about the union access policy  
12 when Mr. Bontempo came to the site?

13 A. When Mr. Bontempo came to the site, he was pretty much  
14 doing his thing as far as seeing if -- who was interested.  
15 So I spoke with him. And I didn't say anything to him about  
16 access at that time because I wanted to make sure that I was  
17 okay with my boss, as far as -- that way I would be within  
18 the guidelines of the Company.

19 Q. So after that visit occurred on that first job that you  
20 were on, you contacted your boss about the union access on  
21 the jobs? And that's when --

22 MR. THOMAS: That's -- I'm sorry. Is that a yes,  
23 Mr. Canfield?

24 THE WITNESS: Yes.

25 MS. WALKER: Thank you.

1 Q. BY MS. WALKER: And that is when your boss, Marc Carney,  
2 told you, before work, after work, and on breaks; is that  
3 correct?

4 A. Yes.

5 Q. Was there ever a job that you were superintendent on  
6 where that policy was not always followed?

7 A. No.

8 Q. Does AMS have any straw bosses?

9 A. We have lead men.

10 Q. What is a lead man?

11 A. A lead man is someone that the supervisor can trust and  
12 expect to carry out things the same way that the supervisor  
13 would.

14 Q. Have you ever appointed a lead man on a job?

15 A. Yes.

16 Q. Okay. Did you have a lead man on the Hermitage job?

17 A. Yes.

18 Q. Who was that?

19 A. Rodney Billings.

20 Q. Did you appoint a lead man on the Holiday Inn job?

21 A. I didn't have to. Rodney has been with me pretty much  
22 the whole time that I've been with AMS.

23 Q. Okay. What about the Holiday Inn job? Was Rodney on  
24 both jobs?

25 A. Yes, he was.

1 Q. Did those jobs, were they being worked at the same time  
2 in St. Pete?

3 A. Yes.

4 Q. Was there some kind of overlap? Or were they both  
5 worked pretty much consistently the entire time together?

6 A. The way it works on a construction job, most of the  
7 time, is when you get to the end of the job, there is very  
8 little to do. So you're going from one job into another job,  
9 where one job is starting and creating a lot of work, while  
10 the other we're demobilizing. There may be a little work  
11 that we have to come back and do as we get completely to the  
12 end of it.

13 Q. Okay. So which job started first, the Hermitage --

14 A. Yes.

15 Q. -- or the Holiday Inn?

16 A. The Hermitage.

17 Q. The Hermitage. And the Hermitage was slowing down when  
18 the Holiday Inn was starting up; is that correct?

19 A. Yes.

20 Q. Okay. So on -- was there ever a time when you were not  
21 at one of the two sites, that you would leave anyone in  
22 charge while you were not at that site?

23 A. No, not so much in charge. No.

24 Q. Okay. So who did the employees at the job that you  
25 would leave answer to while you were gone?

- 1 A. The assistant superintendent at the Hermitage.
- 2 Q. Who was the assistant superintendent at the Hermitage?
- 3 A. Emory Montgomery (ph.).
- 4 Q. Does Emory Montgomery work for AMS?
- 5 A. No.
- 6 Q. Who does Emory Montgomery work for?
- 7 A. For Cambridge.
- 8 Q. And was Cambridge the general contractor on that job?
- 9 A. Yes.
- 10 Q. So if you were not at that job, the general contractor
- 11 would supervise the AMS employees?
- 12 A. There was very -- yes. There was -- the assistant
- 13 superintendent was in charge of the punch. So he would come
- 14 out with a list --
- 15 Q. Oh, when that job was winding down?
- 16 A. Yes.
- 17 Q. Is that correct?
- 18 A. Yes.
- 19 Q. Okay. Are you familiar with the term "straw boss"?
- 20 A. Yes.
- 21 Q. Is that a term that is used at AMS?
- 22 A. I don't like to use it, no.
- 23 Q. Okay. But is it a term that's used at AMS?
- 24 A. I couldn't tell you who uses it or what they use as far
- 25 as terms.

1 Q. Have you ever seen the term "straw boss" on any  
2 documents at AMS?

3 A. No.

4 Q. When the Holiday Inn job at St. Pete was manning up and  
5 the Hermitage job was manning down, how many employees were  
6 at the Hermitage job?

7 A. At any given day, that could change. I couldn't give  
8 you a solid number on that. Depending on what was available  
9 to do is kind of what we would do, as far as what kind of  
10 manpower we put there.

11 Q. Okay. You testified about a day when Mike Bontempo came  
12 to the Hermitage job along with an unknown individual; is  
13 that correct?

14 A. That was the Holiday Inn.

15 Q. I'm sorry. That was the Holiday Inn job. And was the  
16 Hermitage job still being worked at that time?

17 A. I would say, if there was anything to do, there would be  
18 very little. We were pretty much -- I'm pretty sure that we  
19 were on the second floor or going to the second floor by that  
20 time.

21 Q. Was there a time, when you were not at one of those  
22 jobs, that an employee reported to you that Mr. Bontempo had  
23 been to the project?

24 A. No.

25 Q. Did any employee report to you, whether you were there

1 or not, that Mike Bontempo had been to the project?

2 A. To the Holiday Inn?

3 Q. Or the Hermitage, either one.

4 A. No. I don't know of any time that Bontempo went to the  
5 Hermitage while we were going back and forth, other than one  
6 time while I was there at the end of the job.

7 Q. Okay. So you never heard any -- or had any employee  
8 report to you that Mike Bontempo had been on a jobsite  
9 handing out Gatorade or --

10 A. I was there that day.

11 Q. -- shirts? You were there that day?

12 A. Yes, I was.

13 Q. Did any employee report that to you that day?

14 A. A lot of times I would hear from an employee that Mike  
15 was here, because it's a very big job. It's two phases,  
16 eight stories tall. So I could be on one side of the  
17 building and him be on the other side of the building. And  
18 someone would say, hey, Mike's here. So yeah, maybe.

19 Q. Okay. Let me show you -- do you recall giving an  
20 affidavit to the Board agent, Mark Heaton, on July 7th, 2016?

21 A. The affidavit, yeah.

22 Q. You recall doing that?

23 A. Yeah.

24 Q. Let me show you -- I'll refer you to lines 11 through  
25 16, and you can stop right there. If you'll read that and

1 see if that refreshes your memory about whether anyone told  
2 you specifically about that.

3 A. Yes. I was there that day.

4 Q. Okay.

5 A. That's the same day I'm speaking of.

6 Q. Same day you're speaking of, but you told me that you --  
7 generally employees sometimes tell you things and sometimes  
8 don't. But did a specific -- did you tell the Board agent in  
9 that affidavit that a specific employee --

10 A. Obviously --

11 Q. -- let me finish my question, please. That a specific  
12 employee told you that Mike Bontempo had been to that site  
13 and given out Gatorade and T-shirts?

14 A. Obviously.

15 Q. And does that document refresh your memory who that  
16 employee was?

17 A. Obviously, yes.

18 Q. Okay. And who was the employee?

19 A. Johnny Wheeler.

20 Q. Thank you. Do employees take their break and eat lunch  
21 at the same place on a jobsite?

22 A. It depends on how big the jobsite is. There may be  
23 numerous break areas. There may be one break area. The  
24 break area may move, depending on how high you're going up or  
25 how big the jobsite is.

1 Q. Okay.

2 A. As you finish up one building, they may move the break  
3 site to another building.

4 Q. On the day that Mike Bontempo visited the -- was it the  
5 Holiday Inn that he was at, or the Hermitage that he was at?

6 A. On that day?

7 Q. Yes.

8 A. That was the Hermitage.

9 Q. Okay. On the day he visited the Hermitage, at that  
10 point of the project, where were employees taking their  
11 morning break?

12 A. Normally, at the parking lot.

13 Q. Okay. And where were employees taking their lunch?

14 A. Normally, at the parking lot.

15 Q. Okay.

16 A. I can't say that for all employees, just --

17 Q. And on the day that you've testified about, when  
18 Mr. Bontempo visited the Hermitage, I believe you testified  
19 that he arrived around 2:30; is that correct?

20 A. You're talking about the Holiday Inn again.

21 Q. Oh no, I'm sorry about that. The Holiday Inn. We've  
22 gone back -- well, so let me make sure I'm clear, then,  
23 because you said that he was at -- what site did he deliver  
24 the Gatorade and the T-shirts to?

25 A. The Hermitage.

1 Q. The Hermitage. But then he came to visit the Holiday  
2 Inn site. Was that the same day, or a different day?

3 A. I would have to look back through -- I can't say  
4 honestly whether that was the same day or not.

5 Q. So at the time when he visited the Holiday Inn site,  
6 where were the employees taking their break, their morning  
7 break?

8 A. The employees at the Holiday Inn site?

9 Q. Yes.

10 A. We would take it at the Conex. We had a shade put up.

11 Q. Okay. And where would employees take their lunch at the  
12 Holiday Inn site?

13 A. At the same place.

14 Q. I believe you testified that when Mr. Bontempo arrived,  
15 you asked that he come back at a later time; is that correct?

16 A. What are we talking about again?

17 Q. At the Holiday Inn job. When he arrived, you asked --

18 A. I asked if he would wait till after the shift was over,  
19 because it was headed towards the end of the day.

20 Q. Okay. And I believe you testified that he arrived on  
21 site around 2:30; is that correct?

22 A. I'd say between 2 and -- yeah.

23 Q. Okay.

24 A. Sometime between 2 and quitting.

25 Q. And what time would quitting time be on that job?

1 A. 3:30.

2 Q. 3:30?

3 A. For most individuals.

4 Q. Okay. And at the -- I believe you also testified that  
5 at some point, Mr. Bontempo left and did come back at the end  
6 of the day; is that correct?

7 A. No.

8 Q. No? He stayed the whole time?

9 A. He -- they parked at the back of the parking lot.

10 Q. Parked at the back of the parking lot but did not go and  
11 engage employees between the 2 and 3:30 time; is that  
12 correct?

13 A. Uh-huh.

14 Q. I'm sorry, you didn't --

15 A. Yes. They waited until 3:30 and then got out of their  
16 cars.

17 Q. Okay. You testified earlier, on direct examination,  
18 about an interaction between an employee of yours and an  
19 unnamed person with Mr. Bontempo at the Holiday Inn site that  
20 day, correct?

21 A. Yes, ma'am.

22 Q. And again, you've testified that you gave an affidavit  
23 to Board Agent Mark Heaton on July 7, 2016; is that correct?

24 A. Yes. That was the document you just showed me.

25 Q. Correct. And you were asked about that incident in that

1 affidavit; is that correct?

2 A. Yes.

3 Q. Did you tell Mr. Heaton that the unnamed individual  
4 acted in an aggressive manner toward your employee?

5 A. I'm pretty sure the way that I worded it was he harassed  
6 my employee, and I asked him not to.

7 Q. Okay. But did you tell him that he acted aggressively,  
8 in the affidavit, like you've testified today?

9 A. Harassment would be the same thing, wouldn't it?

10 Q. I don't understand harassment to be the same thing as  
11 being aggressive. How do you define aggressive?

12 MR. THOMAS: Objection. Argumentative.

13 JUDGE ROSAS: Sustained. Try it another way.

14 Q. BY MS. WALKER: What did you see -- let me ask you this.  
15 Where did the interaction take place?

16 A. In the parking lot.

17 Q. How far were you from the interaction?

18 A. Twenty or thirty feet.

19 Q. Were you in front of them, or were you behind them?

20 A. Somewhat beside them actually. We were walking from the  
21 building to the Conex. The parking lot is probably 300, 400  
22 feet wide, so everybody takes their tools, water jugs, all  
23 that stuff that we put up on a daily basis, from the building  
24 to the Conex. So we were approximately in between. So I was  
25 somewhat to the side of them.

1 Q. But you weren't involved in the conversation, correct?

2 A. No, no.

3 Q. Okay. Did you tell the Board agent specifically that  
4 the unknown representative was aggressive?

5 A. I said that he harassed my -- I asked him to quit  
6 harassing my employee.

7 Q. I'm asking what you told the Board agent.

8 A. That is what I told him.

9 Q. Did you tell the Board -- you told the Board agent that  
10 he was harassing?

11 A. Yes.

12 Q. Okay. And you testified today that the unknown was  
13 aggressive; is that correct?

14 A. Maybe you're taking --

15 Q. Was that your testimony?

16 A. Maybe I used the wrong word. Maybe you're taking it in  
17 the wrong context.

18 Q. You answered a question from AMS's counsel, and the  
19 question asked if he act -- the question asked if the  
20 gentleman acted in an aggressive manner, and you responded  
21 yes; is that correct?

22 MR. THOMAS: I would object to that. I don't believe I  
23 used the word "aggressive."

24 MS. WALKER: If we could check the record.

25 MR. THOMAS: What I recall my question being was if

1 there was any -- if the Union representative --

2 JUDGE ROSAS: That -- don't testify.

3 MR. THOMAS: Yes, sir.

4 JUDGE ROSAS: All right. I think we're -- you've made  
5 your point --

6 MS. WALKER: Yes, Your Honor. We'll move forward.

7 JUDGE ROSAS: -- along this line. So we can move on.

8 Q. BY MS. WALKER: And this conversation that you testified  
9 about, it occurred after the end of the shift; is that  
10 correct?

11 A. Directly after.

12 Q. Directly after, so it was after the employees were being  
13 paid by AMS; is that correct?

14 A. Yes.

15 Q. Okay. And you testified that, at that time, after the  
16 shift, that you asked Mr. Bontempo or the unnamed person not  
17 to harass your employees; is that correct?

18 A. Yes.

19 Q. And this was in the parking lot, correct?

20 A. Yes.

21 Q. Were employees still bringing supplies back to the Conex  
22 at that time?

23 A. Yes.

24 Q. Does AMS pay the employees for the time that they are  
25 taking supplies back to the Conex?

1 A. Taking supplies back to the Conex may be between 3:28  
2 and 3:30. I'm not sure how you want me to ask -- answer  
3 that.

4 Q. But there was still some work being performed, correct?

5 A. No. Everyone was putting up their tools.

6 Q. And part of work is putting your tools up; is that  
7 correct?

8 A. No. It's their job to bring their tools to work. It's  
9 their jobs to take their tools home.

10 Q. Or to the Conex; is that correct?

11 A. We allow employees to store their tools in the Conex to  
12 be convenient for the employees, so that they're not having  
13 to put a bunch of dirty tools in the back of their car or in  
14 their trunk or in another individual's vehicle that they're  
15 riding with.

16 Q. Did you ever speak to your employees about the Union  
17 election?

18 A. We posted it.

19 Q. What did you post?

20 A. We posted what we were supposed to post.

21 Q. Okay. And was that information about the election?

22 A. Yes.

23 Q. Other than that, you did not have any other  
24 communications with employees about the election?

25 A. No.

1 MS. WALKER: That's all I have. Thank you.

2 JUDGE ROSAS: Any follow-up?

3 MR. THOMAS: There is no follow-up.

4 JUDGE ROSAS: Any follow-up by you?

5 MS. LEONARD: No, Your Honor.

6 JUDGE ROSAS: Okay. I have a couple of questions, sir.

7 THE WITNESS: Yes, sir.

8 JUDGE ROSAS: We've heard some references to Conex. I  
9 may have missed some of the elaboration about it, but what --  
10 can you spell the Conex?

11 THE WITNESS: C-o-n-e-x.

12 JUDGE ROSAS: Okay. And what is the Conex?

13 THE WITNESS: A Conex is a mobile unit that we put on  
14 jobsites to store materials, sometimes for an office.

15 JUDGE ROSAS: So it's like a big trailer?

16 THE WITNESS: It's more like a storage box, like you  
17 would see on big ships, taking cargo from one place to  
18 another.

19 JUDGE ROSAS: Now, there's been references in this case  
20 to food trucks on site.

21 THE WITNESS: Okay.

22 JUDGE ROSAS: On the sites. Variety of locations.  
23 You're familiar with the Westshore Yacht Club job?

24 THE WITNESS: Yes.

25 JUDGE ROSAS: You worked on that job?

1 THE WITNESS: No. I wasn't a part of that job.

2 JUDGE ROSAS: Okay. University of Tampa job?

3 THE WITNESS: No.

4 JUDGE ROSAS: You weren't on that one either? Okay. So  
5 with respect to the jobs that you've testified to today, in  
6 reference to breaks and workers taking their meals, most  
7 workers -- some workers bring their food with them?

8 THE WITNESS: Yes, sir.

9 JUDGE ROSAS: And where do they eat?

10 THE WITNESS: It's pretty typical on any jobsite that  
11 the GC normally does not like any food brought into the  
12 building. So there's normally a designated break and lunch  
13 site, which will vary from job to job.

14 JUDGE ROSAS: Okay. And those jobs that were discussed  
15 just a little while ago, Holiday Inn job and the Hermitage  
16 jobs, were there food trucks on those sites?

17 THE WITNESS: Yes, sir.

18 JUDGE ROSAS: Okay. And where were those food trucks  
19 located?

20 THE WITNESS: They would just pull up, and the guys, you  
21 know, get what they want, and then they leave.

22 JUDGE ROSAS: And they pull up where?

23 THE WITNESS: At the Holiday Inn, it was just in the  
24 center of the parking lot.

25 JUDGE ROSAS: Okay. And when would employees have